A COMPARATIVE STUDY OF PETERS AND POMEROY'S
FOURTH EDITION OF COMMERCIAL LAW AND
TEXAS STATUTES AND RULINGS AND A
TEXAS SUPPLEMENT THERETO

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CHAPTER I

INTRODUCTION

The Need of the Study

There are a number of times that Peters and Pomeroy, in their fourth edition of Commercial Law, make note of the fact that the laws vary in different states; but there are few times that they specify the law for the individual states. No reflection is made on Peters and Pomeroy's book, as it was written to serve as a textbook for a great number of states.

As the State of Texas will grant affiliation for only one-half of a unit of credit in commercial law, a great number of schools are not financially able to equip themselves adequately to supplement the commercial law textbooks. Even if a complete library were available for the commercial law teacher and for the pupils, the present statutes and case laws have grown to such magnitude that it would require a great deal of their time in correlating the law as given by Peters and Pomeroy with Texas laws.

With these things in mind, one can see that there is a need of a correlation between the common laws and regulations as stated in the fourth edition of Commercial Law by Peters and Pomeroy and the rulings and statutes of the State of Texas.
Sources of Data

The comparison made is between Peters and Pomeroy's fourth edition of Commercial Law and the Texas statutes and rulings. These statutes and rulings are found in Vernon's Civil Statutes of the State of Texas, Vernon's Penal Code of the State of Texas, Texas Jurisprudence by William M. McKinney, law cases in the South-Western Reporter, and the acts which became laws in the forty-seventh session of the Texas Legislature found in the House Journal of the proceedings.

Method of Procedure

In Peters and Pomeroy's fourth edition of Commercial Law, a number of cases are cited where there is a difference between the laws and rulings of the various states. There are only three cases in which the difference is given. The procedure was to find all of the cases in which there is any doubt as to the Texas law, and to quote the law or ruling as given by Peters and Pomeroy, and then to give the law or ruling of the State of Texas.
CHAPTER II

A COMPARATIVE STUDY OF PETERS AND POMEROY'S FOURTH EDITION OF COMMERCIAL LAW AND TEXAS STATUTES AND RULINGS

Introduction

There is no difference between the Texas laws and the laws of the various states with regard to the importance of law and why one should study law or why one should consult a lawyer; however, one of Texas' own judges, Judge J. Roberts, in explaining his own judicial actions has given us an expression that might be considered a classical summary of law and justice.

Justice is the dictate of right according to the common consent of mankind generally, of that portion of mankind who may be associated in one government, or who may be governed by the same principles and morals. Law is a system of rules, conformable, as must be supposed, to this standard, and devised upon an enlarged view of the relations of persons and things, as they practically exist. Justice is a chaotic mass of principles. Law is the same mass of principles classified, reduced to order, and put in the shape of rules, agreed upon by this ascertained common consent. Justice is the virgin gold of the mines, that passes for its intrinsic worth in every case, but is subject to a varying value, according to the scales through which it passes. Law is the coin from the mint, with its value ascertained and fixed, with the stamp of government upon it which insures and denotes its current value.

The term "law" generally signifies the rules by which acts, events, writings and conditions are tested with the views of determining the effect to be given them by a judicial tribunal. It is like
the polar star that guides the voyager although it may not stand over the port of destination.1

The Contractual Relation

The use of private seals has been abolished or their value has been abolished or their value has been modified greatly in many of the states. A contract under seal is therefore of no more legal importance than one not under seal. A seal belonging to a corporation, however, is still generally used to authenticate important documents.2

Texas originally followed the civil law in that there was a distinction between sealed and unsealed instruments.

In 1858 the distinction between sealed and unsealed instruments, recognized by the common law, was done away with by a statute which abolished the use of scrolls or private seals, and provided that every contract in writing should be held to import a consideration as fully and in the same manner as sealed instruments had theretofore done and this is still the law.3

The Offer

An offer must be communicated, by either words or acts, to the offeree. A person obviously cannot assent to a proposal of which he knows nothing.

An exception to this rule exists in a few states in case of offers of rewards. In these states it is held that, when an offer of a reward is made to the general public, anyone carrying out the terms of the offer may claim the reward even though he did not know of the offer. Most courts, however, require that in such cases, as well as in the case of other offers, the offeree must know of the offer in order to make an acceptance.4


Texas seems to have no clause for such an exception. There have been a number of cases in which the ruling was that the parties' minds must meet with the subject matter of the agreement, and all of them must assent to the same thing in the same sense at the same time.\(^5\)

Infants

Infants constitute the most important group of persons who are incapable of making certain contracts that may be enforced against them. All persons at common law under the age of twenty-one years are known as minors or, in legal language, as infants. In some states women become of age upon completing their eighteenth year, and in some states one or both sexes attain the rights of adults upon marriage.\(^6\)

The laws of the state of Texas specify infants as the following:

Females under twenty-one years of age who have never been married and males under said age are minors. Minors above the age of nineteen years, where it shall appear to their material advantage, may have their disabilities of minority removed, and be thereafter held, for all legal purposes, of full age except as to the right to vote.

Every female under the age of twenty-one years who shall marry in accordance with the laws of this state, shall, from and after the time of such marriage, be deemed to be of full age and shall have all the rights and privileges to which she would have been entitled had she been at the time of her marriage of full age.

Males under 16 and females under 14 years of age shall not marry.\(^7\)

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\(^5\)Summons v. Mills, 21 Texas 77.

\(^6\)Peters and Pomercy, op. cit., p. 38.

\(^7\)Vernon Law Book Company, publishers, Vernon's Civil Statutes of the State of Texas, Articles 4104, 5921, 4628, and 4603.
It is noted that for the woman to be deemed of full age because of being married, she must marry in accordance with the laws of this state. This means that if a girl under the age of fourteen marries, she will not be deemed to be of full age. There is no provision for a boy to be deemed of full age because of marriage.

Married Women

The common-law incapacity of married women to enter into enforceable agreements is now, in the main, of historical interest only. This disability has been largely, if not entirely, removed by the statutes in nearly all the states. Married women may now contract practically as freely as other normal persons. ⁸

According to the Texas laws, married women are given practically the same rights as men. They are entitled to keep separate property, and to acquire more by gifts or as proceeds of what they have. The matrimonial domicile governs the property acquired during the marriage. There seems to be only one exception. Both the husband's and wife's signatures are required for the disposition of her real estate and stocks and bonds. ⁹

Wagering or Gambling Agreements

Under the common law, wagering or gambling agreements, with a few exceptions, were valid and enforceable. Today, however, statutes in most states

⁸Peters and Pomeroy, op. cit., p. 43.
declare them to be illegal. In such states the winner may not seek the aid of a court to compel the payment of the money or the delivery of the thing won. In some states the loser may recover that which he has given as the result of the wager. In other states, however, he may not do so. Both rules are based upon the belief that they will discourage the practice of making wagering or gambling agreements.\textsuperscript{10}

According to the Texas laws betting of itself is not a violation of the law. The offense consists in betting at prohibited games on prohibited tables or banks.\textsuperscript{11}

Whosoever shall play or bet or wage any money or any thing of value, at any game of cards at any place not a private residence occupied by a family, shall be fined not exceeding fifty dollars. Whosoever shall bet or wager any money or any thing of value at any game played with dominoes at any place not a private residence occupied by a family, shall be fined not exceeding fifty dollars.

The provisions of the two preceding articles which permit gaming at a private residence occupied by a family shall not apply in case such residence is one commonly resorted to for the purpose of gaming, nor where the game played is a banking game.

Whoever shall bet or wager any money or any thing of value at any game played with dice, whether the game be known as craps, high or low dice or die, poker dice or by any other name shall be fined not exceeding fifty dollars.

It being intended by the foregoing articles to include every species of gaming device known by name of table or bank of any kind whatever, this provision shall be construed to include any and all games which in common language are said to be played, dealt, kept, or exhibited.\textsuperscript{12}

Table and bank refers to games in which the proprietor

\textsuperscript{10}Peters and Pomeroy, \textit{op. cit.}, p. 46.

\textsuperscript{11}McKinney, \textit{op. cit.}, Vol. XX, p. 610.

\textsuperscript{12}Vernon, \textit{op. cit.}, Articles 615, 616, 617, and 620.
or dealer works in such a manner that the game is based on the principle of one against many.

The contracts made by gambling are considered illegal and unenforceable. The law provides for a person to recover the money from a stakeholder, but there is no provision for one to recover after he has already paid the wager.13

Agreements Involving Usury

Under the common law an agreement involving any rate of interest is valid. Most states, however, prescribe the rate of interest for which an agreement may be made. Such statutes are deemed socially desirable for the protection of persons from the oppression of unscrupulous money lenders. They provide for a legal rate and a contract rate. The legal rate is applied in cases in which there is an agreement for the payment of interest, but no rate has been specified, and in those special cases that are enumerated in the provisions of the statutes. The contract rate, which ordinarily must be stated in writing, is the amount that may be fixed by agreement. In a few states the contract rate is unlimited.

The effect of usury differs in the several states. In some states the agreement is void. In other states the excess interest cannot be collected by the lender. In still other states, the entire amount of interest cannot be collected. If an occasion arises when knowledge of the penalty for usury is desired, the statute of the state governing the transaction should be consulted.14

This is one of the few cases in which Peters and Pomeroy give the particular law pertaining to the various

14 Peters and Pomeroy, op. cit., p. 48.
states. As Peters and Pomeroy show, Texas' legal rate is six per cent and the contract rate is ten per cent.

There are three conditions not mentioned by Peters and Pomeroy where questions have arisen. A bona fide sale on credit can not be regarded as usurious, however great the difference between the cash and credit prices. "A contract is usurious where it provides for periodic payments on the principal and requires equal payments of interest at the rate of ten per cent computed annually on the original principal." In Texas the rule sanctioning the reservation of interest in advance at the highest contract rate for a year or less has been ruled to be too firmly established from which to depart.\textsuperscript{15}

The Shropshire \textit{v. Commerce Farm Credit Co.}\textsuperscript{16} case has left a ruling that has caused a number of cases to be tried in the last ten years. The ruling is that it is usury if there is any clause in the contract that could lead to usury. As this covers such a wide scope, a number of mortgage cases have been brought before the courts with the case of Shropshire \textit{v. Commerce Farm Credit Co.} used either directly or indirectly as a citation during proceedings.

\textsuperscript{15}Ibid. Vol. XLII, p. 958.

\textsuperscript{16}Shropshire \textit{v. Commerce Farm Credit Co.}, S. W. 2nd. 282, 1930.
Clauses which would make the entire amount mature if a payment is not paid have been eliminated from the contracts.

The usury law seems to be decidedly in favor of the man who deals in large sums. In cases where the amount of interest is fifty dollars or less, it is hardly worth while for the individual to attempt to recover. The lawyer would probably require that amount of fees in case the suit is won and there is the possibility of having to pay the court proceedings in case the suit is lost. If the law provided for the one guilty of usury to pay a reasonable lawyer's fee in case he was found guilty of usury, these cases of usury where small sums are involved would probably be eliminated or at least considerably reduced.

There seem to be a number of ways one can get around the usury law. He can make additional charges and not specify the true amount of interest. In case there is a direct loan without any sale, this cannot be done; however, a pawn broker can include a charge for having the article evaluated provided the payment is not made to someone in his employ. A working relationship between such people is hard to prove.

Sunday Agreements

Under the common law agreements made on Sunday are treated in the same manner as those made on any other day. Statutes in most states, however, prohibit to a greater or lesser extent the execution of agreements on Sunday. The agreements rendered void
by such statutes vary according to the terms of the different legislation. For this reason the laws of each state must be examined to ascertain what agreements may or may not be safely made on Sunday. Statutes prohibiting acts on Sunday usually expressly exempt works of mercy, charity, or necessity. Works of necessity consist in those acts that, under the particular circumstances, are required to maintain life, health, or property.¹⁷

The Texas law prohibits working on Sunday except for household duties, work of necessity and charity, and/or work to save any crop. Sunday sales are prohibited with the following exceptions: burial or shrouding material, newspapers, milk, ice, and motor fuels and vehicle lubricants. The following stores are permitted to remain open: drug stores, boarding houses, restaurants, bathhouses, and telegraph and telephone offices. Liquor stores are not permitted to retail liquor from nine a.m. to four p.m. on Sunday. It is a misdemeanor to keep open a place of business for traffic and public amusements where an admission fee is charged with the exception of motion picture shows which are now permitted to open after one p.m. Boxing and wrestling matches, hunting, the uses of nine and ten pin alleys or billiard tables, and match shooting are forbidden on Sunday.¹⁸

¹⁷Peters and Pomeroy, op. cit. p. 49.

Consideration

Under the common law a consideration is a necessary element of all simple contracts, written or oral. On the other hand, no consideration is necessary in the case of a contract under seal. Thus a gratuitous promise under seal is enforceable. The solemnity of the transaction is deemed, under the common law, to be of sufficient evidence of the intention of the parties to be bound; hence no inducement for the promise is required by courts.

There has been a tendency, however, to depart from the common-law rule that no consideration is necessary for a promise under seal. In some states a seal merely raises a presumption of a consideration, which may be otherwise shown. In other states a consideration must be proved in the case of an agreement under seal, as well as in the case of a simple agreement.19

It is a fundamental rule that every contract must be supported by a consideration. The consideration must be a thing which is lawful and competent in value. In the absence of fraud or over-reaching, the slightest consideration has been held to be sufficient. Texas makes no difference for a consideration whether it be written or oral. As noted before, a contract in writing has the same meaning as one under seal.20

Statute of Frauds

Articles 38, 39, and 40 discuss the statute of frauds, which requires some note or memorandum of the agreement to

19Peters and Pomeroy, op. cit., p. 56.
be in writing under certain conditions. The conditions which it lists follow:

(1) An agreement to charge any executor or administrator upon any special promise to answer for any debt or damages out of his own estate.
(2) An agreement to charge any person upon any special promise to answer for the debt, default, or obligation of another person.
(3) An agreement consisting in a special promise made upon a consideration of marriage.
(4) An agreement to sell, or a sale of any interest in, real property.
(5) An agreement that is not to be performed within a period of one year after it is made.21

Practically the same rules are set forth in the Texas' Statute of Frauds.

No action shall be brought in any court in any of the following cases, unless the promise or agreement upon which such action shall be brought, or some memorandum thereof, shall be in writing and signed by the party to be charged therewith or by some person by him thereunto lawfully authorized:

(1) To charge any executor or administrator upon any promise to answer any debt or damage due from his testation or intestate, out of his own estate; or,
(2) To charge any person upon a promise to answer for the debt, default or miscarriage of another; or,
(3) To charge any person upon any agreement made upon consideration of marriage; or,
(4) Upon any contract for the sale of real estate or the lease thereof for a longer term than one year; or,
(5) Upon any agreement which is not to be performed within the space of one year from the making thereof.22

21Peters and Pomeroy, op. cit., p. 66.
22Vernon, op. cit., Article 3995.
Rights of the Assignee

The assignee may not, in the absence of a statute to that effect, bring an action against the debtor in his own name. He is required to sue on the contract in the name of the assignor. In most states, by meeting the specific requirements of statutes, assignees are now permitted to bring actions in their own names. 23

Under the Texas statutes the assignee has the right to sue in his own name for all of any part he owns; however, if there is a suit, all of the contract must be considered at one time so that the debtor may not be required to pay the taxes of over one suit. 24

Statutes of Limitations

Statutes of limitations ordinarily do not discharge the debts; they merely bar the remedies of the injured parties. This distinction is important because the bar may be waived by a new promise on the part payment or a payment of interest. In some states an express promise is required to be in writing, whereas in other states an express oral promise is sufficient to revive the obligation. The period specified in the statute, during which an action must be commenced, begins to run anew from the date of the revival of the obligation.

In some states the period of time within which an action must be commenced on a sealed, a witnessed, or a non-negotiable note is longer than that given in the foregoing table. In some cases also, the period for judgments includes the time for which a judgment may be renewed. Because any of these data may be changed at any session of the state legislature, this table is given merely as an illustration and not for reference. If an occasion arises when exact information is required, the statutes of the particular state involved should be consulted. 25

23 Peters and Pomeroy, op. cit., p. 80.
25 Peters and Pomeroy, op. cit., p. 86.
Texas laws follow the rule that the statutes of limitations ordinarily do not discharge the debts, but merely bar the remedies of the injured parties. The periods of time given by Peters and Pomeroy for Texas still hold true. The statute of limitations for notes is four years; for open accounts, two years; and for judgments, ten years.26

State Unemployment Compensation Laws

In order to obtain the full benefits of the Federal social security legislation, the various states have, from 1936 on, generally enacted statutes relating to unemployment compensation. These statutes have been enacted as the result of the belief that economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people as a whole.

The important provisions of the unemployment compensation laws are:

(1) Weekly benefits are to be paid to each eligible individual who is totally or partially unemployed. For example, some statutes provide, in case of the total unemployment of a worker, a weekly benefit "at the rate of fifty percentum of his full-time weekly wage but not more than $15 per week, or less than seven dollars or three-fourths of his full-time weekly wages, whichever is the lesser."

(2) An unemployed individual is eligible for benefits if:

(a) He has registered for work at an unemployment office and thereafter has continued to report at the office in accordance with such regulations as the unemployment commission may prescribe.

(b) He has made a claim for benefits in accordance with the provisions of the statute.

(c) He is able to work and is available for work.

(d) He has been unemployed for a specified period previous to any week for which he claims benefits.

(e) He has had a specified term of employment within the year preceding the first week of continuous period of unemployment.

(3) Each employer is required to pay contributions equal to a percentage of the wages paid by him. The percentage increases each year until it is usually two and seven-tenths per cent per year. After that time, in many states, it may be more or less—more if the employees of the particular business receive much unemployment compensation; less if they receive little or none.\(^{27}\)

Texas has enacted an unemployment compensation law which is practically like that described by Peters and Pomeroy.

Payments were made payable on or after January 1, 1938. For total unemployment, an individual is paid one-thirteenth of the wages he earned during the quarter which his wages were highest, i.e., one of the first four of the five quarters preceding the compensation period, or not more than thirty dollars per period nor less than five dollars. The period is for two weeks. One is considered totally unemployed if he does not receive more than six dollars in two weeks. Partial unemployment is where one does not receive as much as four dollars more than he could receive through the unemployment compensation. Partial unemploymes are paid the amount specified under total unemployment, plus four dollars, minus the amount received by partial employment.

\(^{27}\)Peters and Pomeroy, op. cit., p. 148.
An unemployed individual is eligible for benefits if he fulfills the first three parts of section two of article 85 as quoted in the following:

(d) He has within his base period earned wages from employment by employers equal to not less than eight times his benefit amount.
(e) Prior to the first payment of any series of benefits based on an initial claim, he has been totally or partially unemployed for a waiting period of one week. No week shall be counted as a waiting period week for the purposes of this subsection:
   (1) Unless he has registered at an unemployment office in accordance with section four (a) of this act.
   (2) Unless it is the week immediately preceding or in the week immediately following the filing of an initial claim, as the Commission may by regulation prescribe;
   (3) If benefits have been paid with respect thereto.28

After December 31, 1940, the rate of each employer who has had three years' experience with the compensation law shall be based on the unemployment fund's maximum liability for benefits to his employees who have received benefits modified by the state's experience. The rates as figured for the current year, 1941, range from five-tenths of one per cent to two and seven-tenths per cent.28

State Old-Age Pension Laws

In order to qualify for Federal aid for the aged in need, the various states have, from 1936 on, generally enacted statutes or amended their old-age assistance laws. Such statutes have been enacted upon the

belief that the welfare of the public is promoted by public assistance to aged persons who are in need.

The important provisions of the state old-age pension laws are:

1. To be eligible for assistance, the person
   (a) Must be a citizen of the United States and have attained a specified age, usually sixty-five years.
   (b) Must have resided in the state for a specified time, usually five years within the nine years immediately preceding the application for assistance.
   (c) Must not have a sufficient income or other resources for a reasonable subsistence.
   (d) At the time of receiving assistance, must not be an inmate of, or must not be maintained by any municipal, state, national, or private institution.
   (e) Must not have made an assignment or a transfer of property for the purpose of rendering himself eligible for assistance.
   (f) Must not be in need of institutional care because of his physical or mental condition.
2. The amount of assistance varies, but it usually does not exceed $30 a month.
3. A penalty is imposed upon anyone who obtains or attempts to obtain, or who aids any person to obtain, by means of a willfully false statement, by impersonation, or by other fraudulent devices, (a) assistance to which he is not entitled or (b) assistance greater than that to which he is justly entitled.29

The rules given above apply in Texas with the following exceptions:

Part (b) reads: "Resided in the state five of the last nine years, and resided in the state one year immediately preceding the application."

There is a part (g) added which reads: "Is not an habitual criminal or an habitual drunkard."

29 Peters and Pomeroy, op. cit. p. 149.
The law states that the amount shall not ever exceed fifteen dollars of state money a month.30

Workmen’s Compensation Laws

The common-law rules governing the liability of the employer for injuries to employees have been generally abandoned or greatly modified by state legislation under the title of "workmen's compensation laws." These statutes provide for the prompt payment of definite indemnities to injured employees in the event of accidents. They are usually designed to include all injuries that may be properly classified as having been caused by occupational accidents. In some states the statutes cover industrial diseases. The employments affected by such legislation include transportation, construction, and manufacture. On the other hand, farming, domestic service, and occupations not conducted for pecuniary gain are not included within the provisions of the statutes.

The essential features of these acts are:

(1) Partial indemnity must be paid by the employer in the case of the disability or the death of an employee that results from certain accidental injuries.

(2) The indemnity is payable without regard to fault, unless the injury is due to the willful act of the employee or to his intoxication.

(3) The injury must arise out of employment and in the course of employment.

(4) According to a prescribed schedule, the amount of the indemnity is based directly upon the workman's earning capacity and sometimes upon the number of dependents.

The statutes provide also for the establishment of a commission to administer the laws and to determine the validity of the claims. Various schemes are included in the different statutes to assure employees of the payment of indemnities. The statutes usually require that the employer carry sufficient insurance or furnish proof of his ability to pay sums for which he may become liable.31

30Vernon, op. cit., Vol. XVII, Article 6243.

31Peters and Pomeroy, op. cit., p. 150.
The above rules apply in Texas except that the individual must be incapacitated beyond one week; however, if he continues to be incapacitated for four weeks or longer, benefits are to start from the date of incapacity. Texas has an industrial accident board to hear any claim for industrial accidents.\textsuperscript{32}

Requirement of Sales to Be in Writing

Oral sales are enforceable under the common law. In most states, however, the provisions of the English Statute of Frauds that are applicable to sales have been substantially adopted. These provisions have not, however, been so generally or so uniformly adopted by the different states as the provision previously discussed. Some states have no statutes with corresponding provisions.\textsuperscript{33}

Texas is one of the states which has no corresponding provisions. Thus oral sales are enforceable in Texas.

Remedies for a Breach of Warranty

Courts differ as to the remedies available in the case of a breach of warranty. In most states the buyer now has a choice of four remedies. These remedies have been adopted by the Uniform Sales Act. At his election the buyer may:

1. Keep the goods and deduct from the price the amount of the damages caused by the breach of warranty;
2. Keep the goods and bring an action against the seller for damages arising out of the breach;
3. Refuse to accept the goods if the title has not passed, and bring an action against the seller to recover damages for the breach of warranty; or

\textsuperscript{32}Vernon, \textit{op. cit.} Vol. XXII, Article 6306.

\textsuperscript{33}Peters and Pomeroy, \textit{op. cit.} p. 162.
(4) Rescind the contract to sell or the sale, and refuse to receive the goods. If the goods have already been received, the buyer may return them to the vendor and recover what has been paid.34

Texas has not adopted the Uniform Sales Act; however, the remedies given to the buyer are similar to those given in the Uniform Sales Act. The buyer is entitled to an action for rescission, an action for damages, an action for recovery of the subject-matter of the sale, or an action for the recovery of the purchase money paid.35

When the Title Passes

In many states, and under the Uniform Sales Act an exception is made in the case of goods such as coal, wheat, or oil, of which any unit is deemed to be the equivalent of any other unit. The rule constituting this exception provides that, in the sale of an undivided portion of a mass of such goods, the title will pass at once without a determination of the number, the weight, or the measure of the goods, and the buyer will become an owner in common with the seller.36

There is no Texas statute covering this matter, but a ruling of the court gives just the reverse to be the law in Texas. In the case of the Gravity Canal Co. v. Sisk, an agreement concerning rice did not cause the title to pass until the designated amount was set apart.37

35*Kirby, op. cit.*, Vol. XXXVII, p. 603.
37*Kirby, op. cit.*, Vol. XXXVII, p. 453.
Title as Against Others

In a few situations the buyer's title will be defeated by the intervention of the rights of others. In some states the retention of the goods by the seller constitutes a fraud that will render the sale void as against subsequent innocent purchasers or creditors. This rule is based upon the theory that the subsequent purchasers and creditors have been misled by the first purchaser into believing that the seller still owned the goods. In most states, however, the seller's retention of the goods is considered as merely evidence of fraud and may be rebutted by showing that the transaction was made in good faith.

As indicated previously, the reservation of the title by the seller when the goods have been delivered to the buyer under a conditional sales contract opens the way to fraud. In such a case the buyer may obtain credit or even sell the goods to another as the result of his apparent ownership. As the result, statutes have been enacted requiring the seller to file the conditional sales contract in a designated public place so that third persons may learn of the buyer's lack of title. If the seller fails to file the contract, his title is not valid as against persons who in good faith have extended credit to the buyer or have purchased the goods from the buyer. 38

In Texas, if goods are left with the seller, a subsequent buyer will acquire no title. According to the Texas statutes, conditional sales are converted into chattel mortgages and thus are required to be registered to protect the mortgagee against subsequent purchasers. 39

Warehousemen

Under the common law, warehouse receipts are not transferable except by assignment. As we have seen, in the sale or an assignment of rights, the assignee takes the contract subject to any defenses that are valid against his assignor. For this reason one who purchases goods represented by a warehouse receipt

38 Peters and Pomeroy, op. cit., p. 189.
does so at his peril. In order to facilitate the transfer of the title to goods by means of warehouse receipts, statutes have been enacted to protect the bona fide purchasers of warehouse receipts. These statutes provide that, in the case of a receipt calling for the delivery of the goods to the bearer or to the order of the person specified in the receipt, the bona fide purchaser has a right to the goods free from any claims not shown on the face of the instrument or not learned from other sources.\textsuperscript{40}

In Texas, warehouse receipts are transferable in the same manner as promissory notes unless they are clearly stamped "not negotiable."\textsuperscript{41}

\textbf{Liability of an Innkeeper as Bailee}

In many states, legislation either limits, or provides a method for limiting, the liability of the hotelkeeper. These statutes may reduce the liability to that of an ordinary bailee; may limit the extent of the liability; or may permit the hotelkeeper to limit all his liabilities, except that for losses resulting from his or his employees' negligence, by posting directions for depositing valuables in the safe of the hotel or by giving actual notice of an available depository.\textsuperscript{42}

The Texas law places the innkeeper on a degree of care much higher than an ordinary bailee. It is immaterial whether the loss is occasioned by theft or mistake, or by a servant, guest, or a stranger. The courts of many states have held that the innkeeper was the insurer of the property of the guests, but Texas courts have held him liable if he

\begin{flushright}
\textsuperscript{40} Peters and Pomeroy, \textit{op. cit.}, p. 213.  \\
\textsuperscript{41} McKinney, \textit{op. cit.}, Vo. XXXVII, p. 474.  \\
\textsuperscript{42} Peters and Pomeroy, \textit{op. cit.}, p. 222. 
\end{flushright}
is negligent. If a vault is kept for valuables to be placed in, if the doors and windows and transoms can be locked or bolted, and if a copy of this law is placed on the door, the innkeeper is not responsible for losses up to fifty dollars.\textsuperscript{43}

Innkeeper's Lien

The landlord is entitled to demand that the accommodations be paid for in advance; he is not bound to entertain one who is unable or refuses to pay lawful charges. If the landlord does not exercise his privilege of collecting in advance, he may retain the goods brought by the guest, except wearing apparel actually worn, as security for the obligation. This right is known as the innkeeper's right of lien. The lien generally attaches to all goods, regardless of ownership, that are brought by the guest, unless the landlord knows that the goods belong to someone other than the guest.

Statutes usually provide methods by which the detained goods may be sold to satisfy an account that remains unpaid. The right of the landlord to retain or to sell the goods ceases when the debt is paid. The landlord loses his lien if he surrenders the goods to the guest, unless he relinquishes them for only temporary use.\textsuperscript{44}

The law of Texas states that "property of guests" can be held for payment of their account. In the case of Kieffer v. Keough, the ruling was that all of the property brought in by the guest could be held. The innkeeper is entitled to sell the property after holding it thirty days, and after posting notices of such sale three times and

\textsuperscript{43} McKinney, \textit{op. cit.}, Vol. XXIV, p. 353.

\textsuperscript{44} Peters and Pomeroy, \textit{op. cit.}, p. 223.
writing the guest at the address shown in the register of the inn. 45

Liability as a Boardinghouse Keeper

For the loss of the goods of a boarder, the boardinghouse keeper is liable only as an ordinary bailee in a mutual-benefit bailment. In other words, he is liable only when he fails to exercise ordinary care and diligence in the protection of the goods. Under the common law the boardinghouse keeper does not have a lien on the goods of a boarder as security for an unpaid account. He is, however, given a lien by statutes in some states. 46

In the revised statutes of 1925, the Texas laws made the same rules apply to innkeeper and boardinghouse keeper alike. 47

Compensation of Partners

Contrary to the rule in some states, the Uniform Partnership Act provides that a surviving partner is entitled to reasonable compensation for his services in winding up the affairs of the partnership. 48

Under Texas laws, a surviving partner is entitled to reimburse himself for winding up firm affairs. 49

46 Peters and Pomeroy, op. cit., p. 224.
47 Vernon, Civil Statutes, op. cit., Vol. XIV, Article 4956.
48 Peters and Pomeroy, op. cit., p. 231.
Texas has not adopted the Uniform Partnership Act as such, there is a marked resemblance between the Uniform Partnership Act and the Texas statutes.

Liability of Partners

Under the statutes in many states and under the Uniform Joint Obligation Act, partners may be sued separately as well as jointly in contracts.50

The Texas statutes provide for partners to be sued or sue separately as well as jointly, but they must be as such and not in the name of the partnership.51

Foreign Corporations

A corporation may act in any state, unless it is prohibited from doing so by the laws of a particular state. When a corporation acts in a state other than the one in which it was formed, it is known as a foreign corporation. All states have enacted statutes governing the admission of foreign corporations.52

Foreign corporations are required to secure a permit to do business in Texas; thus they are placed upon the same footing as domestic corporations and are required to pay a like fee for the permit to do business as one in the state for filing the charter. Such corporations must have sold and collected for $100,000 worth of capital stock or fifty per cent of the shares subscribed for and ten per cent

52 Peters and Fomeroy, op. cit., p. 358.
paid in. The charter and all amendments, when made, must be filed with the Secretary of State. 53

Voting

Some states provide for cumulative voting in the election of directors. Under the plan of cumulative voting each member has the right to cast as many votes in the aggregate as are equal to the number of shares of stock held by him, multiplied by the number of directors to be elected. The whole number of votes may be distributed among two or more candidates.

The Texas law makes provision for the by-laws of the corporation to prescribe as to whether votes shall be counted per capita or per share. 55

Directors

The actions of a board of directors are valid only when they are made at proper meetings. In the absence of restrictions imposed by a statute, the charter, or the bylaws, such meetings may be held at any place. 56

A majority of the board constitutes a quorum, unless there is a provision to the contrary. A director cannot vote by proxy, as the duties of his office require his personal attention. 57

The Texas statutes say the directors must meet where the charter specifies, but in the absence of such

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54 Peters and Pomeroy, op. cit., p. 360.
56 Peters and Pomeroy, op. cit., p. 361.
specification, the directors can choose the place. In Texas, a majority constitutes a quorum provided business transacted does not relate to one of them personally. 58

Blue-Sky Laws

The purpose of the so-called blue-sky laws is to regulate the sale of securities, including the stock of corporations, and thereby in some measure to protect persons against investments in fraudulent or highly speculative securities. These statutes are of comparatively recent origin; the first was enacted in 1911. Most states, however, now have legislation of this character. 59

Texas has a blue-sky law in which it requires any concern offering any stock for sale to obtain a permit from the Secretary of State. The aggregate amount of commission paid may not exceed twenty per cent of the price of the stock sold. There has never been a case to prove whether or not this rule would apply to an individual owning the stock; however, a case ruled, prior to the passage of this act, that one may be a promoter although he owns the shares he offers for sale. 60

Liabilities of Stockholders

The members of a corporation are not liable for the obligations of the organization, unless the charter or statutory provisions create such a liability. If a stockholder has not paid to the corporation the full amount of his subscription; however, he is liable for the unpaid portion if the corporation needs that amount

58 Ibid. 59 Peters and Pomeroy, op. cit., p. 369.
to pay creditors. Statutes in some instances increase the liability of a stockholder beyond the common-law liability for the par value of the stock owned.61

In Texas, all stockholders are liable for only the cost of the stock they own.62

Cancellation of Fire Insurance

In the absence of a statute or an agreement to the contrary, neither party may cancel a policy of insurance. The parties may, of course, cancel it at any time by mutual consent. Also, the original agreement may provide for the cancellation of the policy by either party at will or upon the happening of some event.63

There is no statute in Texas which provides for the cancellation of a policy unless there has been misrepresentation, fraud, or breach of condition.64 However, there is no law against such provision in the policy.

Assignment

Fire insurance, as previously indicated, is a personal contract and therefore cannot be assigned in the absence of a statute to that effect or the consent of the insurer. A policy of fire insurance usually contains a stipulation that it may be avoided by the insurer if the insured attempts to make an assignment.

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63 Peters and Pomeroy, op. cit., p. 388.
Texas statutes provide for a fire insurance policy to be assigned, unless there is a provision therein to the contrary, with the consent of the insurer. 66

Suicide

Policies often provide that the insurer is not liable if the person whose life is insured commits suicide. In the absence of this provision most courts hold that the risk of the insurer includes suicide. This view is taken by statutes in many states, unless fraud is involved. Statutes in other states adopt the rule that suicide renders the policy unenforceable. 67

In Texas, a company may provide for the payment to be less than the full benefit in case the insured commits suicide; however, there is no statute regarding the matter if there is nothing mentioned about suicide in the policy. 68

Motor Vehicle Insurance

If you are confronted with any of these risks, you should, as a prudent person, be interested in insuring yourself against a possible loss. It is in the interest of society for you to do so when the risks involve the possibility of loss arising out of an injury to the person or the property of another. Indeed, statutes in many states require the owners or the drivers of certain public motor vehicles to carry insurance covering injuries to persons. A few states require all owners or drivers of motor vehicles to carry insurance against liability for injuries to the person or the property of another. 69

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67 Peters and Pomeroy, op. cit., p. 394.
69 Peters and Pomeroy, op. cit., p. 398.
There is no statute in Texas requiring such insurance by the owners or drivers of motor vehicles.

Acquiring Property by Marriage

In the case of marriage, property is also acquired by the operation of the law. At common law a husband by the right of courtesy acquired, generally speaking, all the wife's personal property and a life estate in her lands, provided a child capable of inheriting was born. The wife by the right of dower acquired a one-third interest in all the real property that the husband owned during their marriage. Both the interest of the husband and that of the wife in the property of the other have been changed by statutes in many states.70

The common law no longer holds in Texas. The property belonging to either the husband or the wife at the time of their marriage remains separate. Each has the sole management, control and disposition rights of his separate property both real and personal; with the exception that the signatures of both husband and wife are required for the disposition of her real estate and stocks and bonds.71

Registration of Titles

In order to remove uncertainties as to titles and to eliminate the expense usually attending conveyances, some states have adopted a system of registration of land titles. This system is popularly known as the Torrens System because of the efforts of Sir Robert Torrens to gain its adoption.72

70 Ibid., p. 439.
72 Peters and Pomeroy, op. cit., p. 461.
Texas has not adopted the system of registration of titles. As the titles in Texas are not nearly as old as some titles in the New England States and some other states, Texas has not felt as great a need for the system.  

Recording the Mortgage

Texas follows the procedure given by Peters and Pomeroy which states:

Statutes usually require that mortgages must be recorded in order to be valid as against bona fide purchasers, mortgagees, and creditors without notice. They ordinarily must be filed or recorded in the county in which the property is located. This procedure enables subsequent purchasers, mortgagees, or creditors to discover the claim of the mortgagee on the particular property. It prevents an unscrupulous owner from defrauding other persons by mortgaging his property to one person, and then selling it to another who knows nothing of the claim of the mortgagee.

Right of Possession

Texas has followed the Uniform Mortgage Act as given by Peters and Pomeroy as follows:

Under the Uniform Mortgage Act the mortgagor is treated as the owner of the property. This act adopts the point of view of many courts that a mortgage is not a transfer of the title to property, although it is in the form of an absolute conveyance. Under this point of view the mortgage creates only a preferred claim against

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74 Peters and Pomeroy, op. cit., p. 468.
the property as security for a debt. Hence the mortgagor is entitled to the possession of the property, unless he allows the mortgagee to take possession or unless he is removed through legal procedure. He is ordinarily entitled also to rents and profits free from the claims of the mortgagee.\textsuperscript{76}

Equity of Redemption

At one time the mortgagor lost all right in the mortgaged property if the obligation was not performed on the day it was due. This rule caused hardship and resulted in injustice in many instances. Courts consequently allowed the mortgagor the privilege of regaining the interest in the property, even after default, upon performance at any time before the foreclosure of the mortgage. This right is known as the mortgagor's right to redeem or equity of redemption. Today, under statutes in some states and under the Uniform Mortgage Act, the mortgagor is entitled also to redeem the property within a limited time after foreclosure.\textsuperscript{77}

There is no Texas statute concerning this, but the courts have ruled that foreclosure signifies the cutting off of the equity or redemption.\textsuperscript{78}

The Lease

The agreement that establishes the relation of landlord and tenant is known as a lease. Consequently the landlord is often called the lessor; and the tenant, the lessee. A lease may be oral or written if there is no statute prescribing a particular form. Leases that are to exist for periods longer than a specified time, however, are usually required to be in writing. In some

\textsuperscript{76}Peters & Pomeroy, \textit{op. cit.}, p. 468.

\textsuperscript{77}Ibid., p. 469.

\textsuperscript{78}McKinney, \textit{op. cit.}, Vol. XXIX, p. 790.
states a lease must be in writing if it is for three years or more. In other states a lease for one year or more must be written. 79

In Texas any lease for over a period of one year is void to subsequent purchasers unless they have notice of such or unless it is filed with the county clerk. 80

Landlord’s Duties

In the absence of an agreement to the contrary, the landlord must pay the taxes and assessments on the leased property. He is generally under no obligation to make repairs or to pay the tenant for any improvements made on the property, unless there is an agreement to that effect. Statutes in some states, however, now require the landlord to keep a leased house in habitable condition. If leased buildings are destroyed through no fault of his, the landlord is not obligated under the common law to rebuild them. 81

Texas statutes do not require the landlord to make any repairs or pay the tenant for such in the absence of an agreement. 82

Duties of Drivers

Many states have statutes that prescribe a maximum speed that drivers must observe when driving on country roads, when passing through villages, or when driving through school zones. A speed greater than the specified rate is usually considered to be prima facie evidence of negligence or the failure to exercise due care.

79Peters and Pomeroy, op. cit., p. 475.
80McKinney, op. cit., Vol. XXVII, p. 87.
81Peters and Pomeroy, op. cit., p. 477.
A motorist is not, however, relieved of the duty to exercise due care by the fact that the law permits the driving of a car at a given rate of speed. 83

Until the 47th session of the Texas legislature the speed limit was forty-five miles per hour on the highway and twenty miles per hour within the limits of a city. The present law follows:

It shall be unlawful for any person to operate or drive any motor or other vehicle upon the public highways of Texas at a rate of speed in excess of sixty miles an hour during the daytime, or to drive or operate a motor or other vehicle at a rate of speed in excess of fifty-five miles per hour during the nighttime, or drive or operate a motor or other vehicle within the corporate limits of an incorporated city or town, or within or through any town or village not incorporated, at a greater rate of speed than thirty miles per hour; provided, that it shall be unlawful to drive or operate upon said public highways a commercial motor vehicle, truck-tractor, trailer, or semi-trailer as defined in this Act, at a rate of speed in excess of forty-five miles per hour during the daytime, or to drive or operate said commercial motor vehicle, truck-tractor, trailer, or semi-trailer, at a rate of speed in excess of forty-five miles per hour during the nighttime.
Provided further, that it shall be unlawful to operate any motor vehicle engaged in this state in the business of transporting passengers for compensation or hire on any highway, road, or thoroughfare not privately owned between cities, towns, and villages, at a rate of speed in excess of fifty miles per hour.

Daytime as used in this Act shall mean a half hour before sunrise to a half hour after sunset, and nighttime shall mean at any other hour.

Provided further that no person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions then existing, having regard to the actual and potential hazards when approaching and crossing an intersection or a railway grade crossing, when approaching a hill crest, when traveling upon any narrow or winding roadway, or when special hazard exists with respect to pedestrians or other

83Peters and Pomeroy, op. cit., p. 494.
traffic or by reason of weather or highway conditions; and speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the highway in compliance with legal requirements and the duty of all persons to use due care.

The State Highway Commission shall have the power and authority upon the basis of an engineering and traffic investigation to determine and fix the maximum, reasonable and prudent speed at any road or highway intersection, railway grade crossings, curves, hills, or upon any other part of a highway, less than the maximum hereinbefore fixed by this Act, taking into consideration the width and condition of the pavement and other circumstances on such portion of said highway as well as the usual traffic thereon. That whenever the State Highway Commission shall determine and fix the rate of speed at any said point upon any highway at a less rate of speed than the maximum hereinbefore set forth in this Act and shall declare the maximum, reasonable and prudent speed limit thereat by proper order of the Commission entered on its minutes, such rate of speed shall become effective and operative at said point on said highways when appropriate signs giving notice thereof are erected under the order of the Commission at such intersection or portion of the highway.

That whenever the governing bodies of incorporated cities and towns in this State within their respective jurisdictions determine upon the basis of an engineering and traffic investigation that the maximum reasonable and prudent speed at any intersection or other portion of the highway, based upon the intersections, railway grade crossings, curves, hills, width and condition of pavement and other conditions on such highway, and the usual traffic thereon, is greater or less than the speed limits hereinbefore set forth, said governing bodies shall have the power and authority to determine and declare the maximum reasonable and prudent speed limit thereat, which shall be effective at such intersection or other place.

It shall be unlawful for any person to so operate or drive any motor or other vehicle upon the public highways or streets of this State so as to wilfully obstruct or impede the normal, reasonable and safe movement of traffic. Police officers are hereby authorized to enforce the foregoing provisions by directions to drivers; and a wilful disobedience to this provision
shall be in violation of law punishable as provided in this Act. 84

Traffic Regulations

Most states have statutes governing cars or trucks being driven on the highways. These statutes prescribe the number, the color, and the intensity of the lights required on vehicles, as well as the condition of the brakes and the amount of the load being carried.

Statutes also require that a car have a horn for use in signaling, and frequently indicate what signals must be given by hand. For example, a left turn should be indicated by the left hand being extended horizontally; a right turn should be indicated by the forearm being extended vertically; and a stop should be indicated by the left arm being extended downward.

Statutes and ordinances usually provide that on streets marked into lanes drivers moving slowly must stay in the outside lane. A driver turning to the right should be in the lane to the extreme right. On the other hand, a driver turning to the left should, except in a few cities having unusual traffic regulations, be in the lane at the extreme left on his side of the highway.

Some states maintain ports of entry, where all trucks and busses are required to stop for the payment of road fees. In some states all cars must stop at such ports for inspection or for the purpose of giving information that may be used in case such cars are stolen while they are in those states. 85

Texas requires that every motor vehicle shall be equipped with a bell, gong, horn, whistle, or other device in good working order capable of making a sound with enough volume to warn an approaching vehicle or such. There are also provisions requiring lights and proper brakes. The maximum penalty for not being properly equipped is one hundred dollars.

The uniform signaling as used in many states is not the law in Texas. The person operating any vehicle upon any

84 House Journal, March 31, 1941, p. 1785.
85 Peters and Pomeroy, op. cit., p. 495.
public highway is supposed to give a plainly visible or audible signal or his intentions of turning, stopping, or changing of course to any other vehicle that may be reasonably affected by such action. There is no state law dealing with streets, lanes, etc., other than that a vehicle being driven slowly should be kept to the right.\(^{36}\)

\[\ldots\] the gross weight is ascertained by adding forty to the distance in feet between the first and last axles of a vehicle or combination of vehicles, and multiplying this sum by seven hundred. Provided, however, that the gross weight shall never exceed thirty-eight thousand pounds.\(^{37}\)

From the above excerpt from House Bill number 19, the present weight limit for any truck can be ascertained.

This bill became a law March 24, 1941, when the governor signed the bill. This is quite an increase in the gross weight permitted for trucks, over the prior law.

Punishment

The legislature of a state has the power to fix any punishment, unless it is restricted from doing so by constitutional provisions. Practically all state constitutions contain limitations on the legislative power to prescribe penalties for antisocial conduct. Although these limitations vary, they usually include prohibitions against excessive fines and cruel and


unusual punishment, similar to the provisions found in the Federal Constitution. 88

Texas has such laws which vary with different offenses. They are quoted so as to give the maximum penalty of one hundred dollars for the violation of not having certain proper car accessories. In some instances there is a minimum as well as a maximum penalty given, as in the case of driving while intoxicated, which gives a minimum jail sentence of thirty days and a maximum penalty of a term of two years or a minimum of fifty dollars fine and a maximum of five hundred dollars or both. 89

Arson

At common law the willful, malicious burning of the house of another during the day or the night is arson. It is considered primarily an offense against the person, although it now is extended to the protection of property rights. The extent of the burning is immaterial. The crime is complete as soon as any part of the structure, however trivial, burns. If a shingle is consumed or charred, although the fire is afterwards extinguished, there is sufficient evidence of arson. On the other hand, if the building is merely filled with smoke and the walls become blackened, without part of the building being set afire, arson has not been committed.

Under the common law, arson was not committed unless the building was occupied by human beings or it was near a dwelling house. In many states, however, statutes have extended the offense to include the burning of other types of structures such as jails, ships, railroad cars, busses, and the like. Ordinarily the

88 Peters and Pomeroy, op. cit., p. 504.
89 Vernon, Penal Code, op. cit., Articles 799 and 802.
burning of a building by the owner with the intent to defraud, although considered a criminal offense, is not treated as arson.\textsuperscript{90}

The Texas law defines arson as the burning of any house which it defines as any building, edifice, or structure enclosed with walls and covered. An owner is not guilty of arson unless the fire is within a town or city, or when it is insured, or if there is danger of damage to some individual or to another's house. The penalty for arson is a term in the penitentiary of not less than two years nor more than twenty years.\textsuperscript{91}

\textbf{Extortion}

Another crime involving an offense against the person is extortion. At common law this offense is committed when an officer of the law, by virtue of his office, unlawfully takes money or property of another. Under many statutes it consists in any taking of money or property by force or intimidation.\textsuperscript{92}

Texas takes the later rule of considering extortion to consist of any taking of money or property by force or intimidation.\textsuperscript{93}

\textbf{Monopolies}

Practically all states have enacted antitrust legislation. These statutes vary in details, but all

\textsuperscript{90} Peters and Pomeroy, \textit{op. cit.}, p. 507.

\textsuperscript{91} Vernon, \textit{Penal Code}, \textit{op. cit.}, Article 1316.

\textsuperscript{92} Peters and Pomeroy, \textit{op. cit.}, p. 507.

\textsuperscript{93} Vernon, \textit{Penal Code}, \textit{op. cit.}, Article 1300.
are of the same general nature as the Federal anti-
trust act, known as the Sherman Antitrust Act. This
act has been amended and supplemented by the Clayton
Act, the Federal Trade Commission Act, the Shipping
Act, and other legislation.
Under the Sherman Act and other antimonopoly
laws, the following agreements are considered illegal:
(1) Agreements to fix prices
(2) Agreements to divide territory, earnings,
or profits.
(3) Agreements to corner commodities
(4) Agreements to maintain resale prices
Generally speaking, these statutes make illegal
an attempt to monopolize trade or commerce, or an
agreement and combination to restrain trade
unreasonably.\textsuperscript{94}

Texas' antitrust statutes denounce and make illegal,
void and criminally punishable almost every conceivable
kind of combination or contract which tends to restrain
trade or commerce.\textsuperscript{95}

\textbf{State Courts}

The systems of courts in the different states
vary in details, but are organized along somewhat
similar lines. Each state ordinarily has (1) courts
of justices of the peace, having original jurisdic-
tion over minor cases; (2) county or district courts,
having original jurisdiction over important cases;
and (3) a supreme court, generally having appellate
jurisdiction only.
Some states have intermediate appellate courts.
Many states have special courts, called probate or
orphans' courts, having jurisdiction over the estates
of deceased persons.
Each city has a police court. Some cities have
courts that try special cases, as, for example,
criminal courts, juvenile courts, and courts of
domestic relations.

\textsuperscript{94}Peters and Pomeroy, \textit{op. cit.}, p. 510.

\textsuperscript{95}McKinney, \textit{op. cit.}, Vol. XXIX, p. 746.
The decision of the supreme court of a state is final in all cases not involving rights and immunities under the Federal Constitution, Federal laws, or treaties. Cases that involve these rights and immunities may be reviewed for errors by the Supreme Court of the United States.96

The Texas court systems consist of the following: the supreme court, the court of criminal appeals, the commissioners attached to the supreme court and the court of criminal appeals, the courts of civil appeals, the district courts, the county courts, the commissioners' courts (for the administration of the affairs of the counties), the justices' courts, and corporation courts.97

96 Peters and Pomeroy, op. cit., p. 524.

CHAPTER III

A TEXAS SUPPLEMENT TO PETERS AND POMEROY'S
FOURTH EDITION OF COMMERCIAL LAW

The following is a Texas supplement to Peters and
Pomeroy's fourth edition of Commercial Law. The desig-
nations made after the subtitles refer to sections in this
book. The discussion found in each division of the chap-
ter is the Texas law or ruling given to supplement the
above-mentioned book.

The Contractual Relation--Section 8

In 1858 the distinction between sealed and un-
sealed instruments, recognized by the common law, was
done away with by a statute which abolished the use of
scrolls or private seals, and provided that every con-
tract in writing should be held to import a considera-
tion as fully and in the same manner as sealed
instruments had theretofore done and this is still
the law.1

The Offer--Section 13

Texas has no clause for such an exception. There
have been a number of cases in which the ruling was that
the parties' minds must meet with the subject matter of
the agreement, and all of them must assent to the same
thing in the same sense at the same time.2

2 Summons v. Mills, 21 S. v. 2nd. Texas 77.
Infants—Section 20

Females under twenty-one years of age who have never been married and males under said age are minors. Minors above the age of nineteen years, where it shall appear to their material advantage, may have their disabilities of minority removed, and be thereafter held, for all legal purposes, of full age except as to the right to vote.

Every female under the age of twenty-one years who shall marry in accordance with the laws of this state, shall, from and after the time of such marriage, be deemed to be of full age and shall have all the rights and privileges to which she would have been entitled had she been at the time of her marriage of full age.

Males under 16 and females under 14 years of age shall not marry.3

Married Women—Section 23

According to the Texas laws, married women are given practically the same rights as men. They are entitled to keep separate property, and to acquire more by gifts or as proceeds of what they have. The matrimonial domicile governs the property acquired during the marriage. Any property acquired during matrimonial life becomes community property and the husband and wife share alike in its possession. There seems to be only one exception: both the husband's and wife's signatures are required for the disposition of her real estate and stocks and bonds.4

3Vernon’s Civil Statutes, op. cit., Art. 4104, 5821, 4628, and 4803.
Wagering or Gambling Agreements—Section 25

According to the Texas Laws betting of itself is not a violation of the law. The offense consists in betting at prohibited games on prohibited tables or banks.5

Whoever shall play or bet or wage any money or any thing of value, at any game of cards at any place not a private residence occupied by a family, shall be fined not exceeding fifty dollars.

Whoever shall bet or wager any money or any thing of value at any game played with dominoes at any place not a private residence occupied by a family, shall be fined not exceeding fifty dollars.

The provisions of the two preceding articles which permit gaming at a private residence occupied by a family shall not apply in case such residence is one commonly resorted to for the purpose of gaming, nor where the game played is a banking game.

Whoever shall bet or wager any money or any thing of value at any game played with dice, whether the game be known as craps, high or low dice or die, poker dice or by any other name shall be fined not exceeding fifty dollars.

It being intended by the foregoing articles to include every species of gaming device, known by the name of table or bank of any kind whatever, this provision shall be construed to include any and all games which in common language are said to be played, dealt, kept or exhibited.6

Table and bank refer to games in which the proprietor or dealer works in such a manner that the game is based on the principle of one against many.

The contracts made by gambling are considered illegal and unenforceable. The law provides for a person to recover

5Ibid., Vol. XLII, p. 956.

6Vernon's Civil Statutes, op. cit., Articles 615, 616, 617, and 620.
the money from a stakeholder, but there is no provision for one to recover after he has already paid the wager.\(^7\)

Agreements Involving Usury—Section 26

As shown by Peters and Pomeroy, Texas' legal rate is six per cent and the contract rate is ten per cent.

There are three conditions not mentioned by Peters and Pomeroy where questions have arisen. A bona fide sale on credit can not be regarded as usurious, however great the difference between the cash and credit prices. "A Contract is usurious where it provides for periodic payments on the principal and requires equal payments of interest at the rate of ten per cent computed annually on the original principal." In Texas the rule sanctioning the reservation of interest in advance at the highest contract rate for a year or less has been ruled to be too firmly established from which to depart.\(^8\)

The Shropshire v. Commerce Farm Credit Co.\(^9\) case has left a ruling that has caused a number of cases to be tried in the last ten years. The ruling is, that it is usury if there is any clause in the contract that could lead to usury. As this covers such a wide scope, a number of

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\(^7\) McKinney, op. cit., Vol XX, p. 61.

\(^8\) Ibid., Vol. XLII, p. 956.

\(^9\) Shropshire v. Commerce Farm Credit Co., S. W. 2nd. 282, 1930.
mortgage cases have been brought before the courts with the case of Shropshire v. Commerce Farm Credit Co. used either directly or indirectly. Clauses which would make the entire amount mature if a payment is not paid have been eliminated from the contracts.

The usury law seems to be decidedly in favor of the man who deals in large sums. In cases where the amount of interest is fifty dollars or less, it is hardly worth while for the individual to attempt to recover. The lawyer lawyer would probably require that amount of fees in case the suit is won and there is the possibility of having to pay the court proceedings in case the suit is lost. If the law provided for the one guilty of usury to pay a reasonable lawyer's fee in case he was found guilty of usury, these cases of usury where small sums are involved would probably be eliminated or at least considerably reduced.

There seem to be a number of ways one can get around the usury law. He can make additional charges and not specify the true amount of interest. In case there is a direct loan without any sale, this cannot be done; however, a pawn broker can include a charge for having the article evaluated provided the payment is not made to someone in his employ. A working relationship between such people is hard to prove.
Sunday Agreement—Section 27

The Texas law prohibits working on Sunday except for household duties, work of necessity and charity, and/or work to save any crop. Sunday sales are prohibited with the following exceptions: burial or shrouding material, newspapers, milk, ice, and motor fuels and vehicle lubricants. The following stores are permitted to remain open: drug stores, boarding houses, restaurants, bathhouses, and telegraph and telephone offices. Liquor stores are not permitted to retail liquor from nine a.m. to four p.m. on Sundays. It is a misdemeanor to keep open a place of business for traffic and public amusements where an admission fee is charged with the exception of motion picture shows, which are now permitted to open after one p.m. Boxing and wrestling matches, hunting, the uses of nine and ten pin alleys or billiard tables, and match shooting are forbidden on Sunday.10

Consideration—Section 31

It is a fundamental rule that every contract must be supported by a consideration. The consideration must be a thing which is lawful and competent in value. In the absence of fraud or over-reaching, the slightest consideration has been held to be sufficient. Texas makes no difference for

a consideration whether it be written or oral. As noted before, a contract in writing has the same meaning as one under seal.11

Statute of Frauds—Section 38

No action shall be brought in any court in any of the following cases, unless the promise or agreement upon which such action shall be brought, or some memorandum thereof, shall be in writing and signed by the party to be charged therewith or by some person by him thereunto lawfully authorized:

(1) To charge any executor or administrator upon any promise to answer any debt or damage due from his testation or interstate, out of his own estate; or,
(2) To charge any person upon a promise to answer for the debt, default or miscarriage of another; or,
(3) To charge any person upon any agreement made upon consideration of marriage; or,
(4) Upon any contract for the sale of real estate or the lease thereof for a longer term than one year; or
(5) Upon any agreement which is not to be performed within the space of one year from the making thereof.12

Rights of the Assignee

The Texas statutes give the assignee the right to sue in his own name for all or any part he owns; however, if there is a suit, all of the contract must be considered at one time so that the debtor may not be required to pay more than one suit.13

12Vernon's Civil Statutes, op. cit., Article 3995.
Statutes of Limitations—Section 52

Texas laws follow the rule that the statutes of limitations ordinarily do not discharge the debts, but merely bar the remedies of the injured parties. The periods of time given by Peters and Pomeroy for Texas still hold true. The statute of limitations for notes is four years; for open accounts, two years; and for judgments, ten years.\(^\text{14}\)

State Unemployment Compensation Laws—Section 85

Texas has enacted an unemployment compensation law which is practically like that described by Peters and Pomeroy.

Payments were made payable on or after January 1, 1938. For total unemployment, an individual is paid one-thirteenth of the wages he earned during the quarter which his wages were highest, i.e., one of the first four of the five quarters preceding the compensation period, or not more than thirty dollars per period nor less than five dollars. The period is for two weeks. One is considered totally unemployed if he does not receive more than six dollars in two weeks. Partial unemployment is where one does not receive as much as four dollars more than he could receive through the unemployment compensation. Partial unemployees are paid the amount specified under

total unemployment, plus four dollars, minus the amount received by partial employment.

An unemployed individual is eligible for benefits if he fulfills the first three parts of section two of article 85 as quoted in the following:

(d) He has within his base period earned wages from employment by employers equal to not less than eight times his benefit amount.

(e) Prior to the first payment of any series of benefits based on an initial claim, he has been totally or partially unemployed for a waiting period of one week. No week shall be counted as waiting period week for the purposes of this subsection:

(1) Unless he has registered at an unemployment office in accordance with section four (a) of this act;

(2) Unless it is the week immediately preceding or the week immediately following the filing of an initial claim, as the Commission may by regulation prescribe;

(3) If benefits have been paid with respect thereto.

After December 31, 1940, each employer's rate, who has had three years' experience with the compensation law, shall be based on the unemployment fund's maximum liability for benefits to his employees who have received benefits modified by the state's experience. The rates as figured for the current year, 1941, range from five-tenths of one per cent to two and seven-tenths per cent.15

15 Ibid., Vol. XXVIII, p. 105.
State Old-Age Pension Laws--Section 86

The rules given by Peters and Pomeroy apply in Texas with the following exceptions:

Part (b) reads: "Resided in the state five of the last nine years, and resided in the state one year immediately preceding the application."

There is a part (g) added which reads: "Is not an habitual criminal or an habitual drunkard."

The law states that the amount shall not ever exceed fifteen dollars of state money a month.\(^{16}\)

Workmen's Compensation Laws--Section 87

The rules as given by Peters and Pomeroy apply in Texas except that the individual must be incapacitated beyond one week; but if he continues to be incapacitated for four weeks or longer, benefits are to start from the date of the incapacity. Texas has an industrial accident board to hear any claim for industrial accidents.\(^{17}\)

Requirement of Sales to be in Writing--Section 94

As Texas has made no provision for sales to be in writing, oral sales are enforceable.

\(^{16}\)Vernon's Civil Statutes, op. cit., Vol. XVII, Article 6243.

\(^{17}\)Vernon's Civil Statutes, op. cit., Vol. XXII, Article 6308.
Remedies for a Breach of Warranty--Section 105

Texas has not adopted the Uniform Sales Act; however, the remedies given to the buyer are similar to those given under the Uniform Sales Act. The buyer is entitled to an action for rescission, an action for damages, an action for recovery of the subject matter of the sale, or an action for the recovery of the purchase money paid.18

When the Title Passes--Section 106

There is no Texas statute covering this matter, but a ruling of the court gives just the reverse to the law as given in Peters and Pomeroy. In the case of the Gravity Canal Co. v. Sisk, an agreement concerning rice, did not cause the title to pass until the designated amount was set apart.19

Title as Against Others--Section 110

In Texas, if goods are left with the seller, a subsequent buyer will acquire no title. According to the Texas statutes conditional sales are converted into chattel mortgages and thus are required to be registered to protect the mortgagee against subsequent purchasers.20

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18 McKinney, op. cit., Vol. XXXVII, p. 603
19 Ibid., p. 453. 20 Ibid., p. 213.
Warehousement—Section 124

In Texas, warehouse receipts are transferable in the same manner as promissory notes unless they are clearly stamped "not negotiable."\(^{21}\)

Liability of an Innkeeper as Bailee—Section 128

The Texas law places the innkeeper on a degree of care, much higher than an ordinary bailee. It is immaterial whether the loss is occasioned by theft or mistake, or by a servant, guest, or a stranger. The courts of many states have held that the innkeeper was the insurer of the property of the guests, but Texas courts have held him liable if he is negligent. If a vault is kept for valuables to be placed in, if the doors and windows, and transoms can be locked or bolted, and if a copy of this law is placed on the door, the innkeeper is not responsible for losses up to fifty dollars.\(^{22}\)

Innkeeper's Lien—Section 129

The law of Texas states that "property of guests" can be held for payment of the guests' accounts. In the case Kieffer v. keough, the ruling was that all of the property brought in by the guest could be held. The innkeeper is entitled to sell the property after holding it thirty days

\(^{21}\)Ibid., p. 474.

\(^{22}\)Ibid., Vol. XXIV, p. 353.
and after posting notices of such sale three times and writing the guest at the address shown in the register of the inn.\(^{23}\)

**Liability as a Boardinghouse Keeper—Section 130**

In the revised statutes of 1925, the Texas laws made the same rules apply to innkeeper and boardinghouse keeper alike.\(^{24}\)

**Compensation of Partners—Section 193**

Under Texas laws, a surviving partner is entitled to reimburse himself for winding up firm affairs.\(^{25}\) Although Texas has not adopted the Uniform Partnership Act as such, there is a marked resemblance between the Uniform Partnership Act and the Texas statutes.

**Liability of Partners—Section 199**

The Texas statutes provide for partners to be sued or sue separately as well as jointly, but they must be as such and not in the name of the partnership.\(^{26}\)

**Foreign Corporations—Section 213**

Foreign corporations are required to secure a permit to do business in Texas; thus they are placed upon the same

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\(^{24}\) *Vernon’s Civil Statutes*, Vol. XIV, Article 4956.


footing as domestic corporations and are required to pay a like fee for the permit to do business as domestic corporations for filing of charters. Such corporations must have sold and collected for $100,000 worth of capital stock or fifty per cent of the shares subscribed for and ten per cent paid in. The charter and all amendments, when made, must be filed with the Secretary of State.  

Voting--Section 216

The Texas law makes provision for the by-laws of the corporation to prescribe as to whether votes shall be counted per capita or per share.  

Directors--Section 217

The Texas statutes say the directors must meet where the charter specifies, but in the absence of such specification the directors can choose the place. In Texas, a majority constitutes a quorum provided business transacted does not relate to one of them personally.  

Blue-Sky Laws--Section 22

Texas has a blue-sky law which requires any concern offering any stock for sale to obtain a permit from the Secretary of State. The aggregate amount of commission

29Ibid., p. 937.
paid may not exceed twenty per cent of the price of the stock sold. There has never been a case to prove whether or not this rule would apply to an individual owning the stock; however, a case ruled, prior to the passage of this act, that one may be a promoter although he owns the shares he offers for sale.  

Liabilities of Stockholders--Section 224

In Texas, stockholders are liable only for the cost of the stock they own.  

Cancellation of Fire Insurance--Section 236

There is no statute in Texas which provides for the cancellation of a policy unless there has been misrepresentation, fraud, or breach of condition. However, there is no law against such provisions in the policy.

Assignment--Section 238

Texas statutes provide for a fire insurance policy to be assigned, unless there is a provision therein to the contrary, with the consent of the insurer.

Suicide--Section 241

In Texas, a company may provide for the payment to be less than the full benefit in case the insured commits suicide;

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31Ibid., Vol. X, p. 797.  
32Ibid., Vol. XXIV, p. 906.  
33Ibid., p. 1200.
however, there is no statute regarding the matter if there is nothing mentioned about suicide in the policy. 34

Motor Vehicle Insurance—Section 245

There is no statute in Texas requiring such insurance by the owners or drivers of motor vehicles.

Acquiring Property by Marriage—Section 270

The common law no longer holds in Texas. The property that the husband and the wife own at the time of their marriage remains their private property. Each has the sole management, control and disposition rights of his separate property both real and personal; except that the signatures of both husband and wife are required for the disposition of the wife's real estate and stocks and bonds. 35

Registration of Titles—Section 287

Texas has not adopted the system of registration of titles. As the titles in Texas are not nearly so old as some titles in the New England States and some other states, Texas has not felt so great a need for the system. 36

Recording the Mortgage—Section 291

Texas follows the procedure given by Peters and Pomeroy as to the recording of the mortgage. 36

36 Ibid., Vol. XXIX, p. 875.
Right of Possession--Section 292

Texas has followed the Uniform Mortgage Act as given by Peters and Pomeroy regarding the right of possession.37

Equity of Redemption--Section 294

There is no Texas statute concerning the equity of redemption, but the courts have ruled that foreclosure signifies the cutting off of the equity.38

The Lease--Section 301

In Texas, any lease for over a period of one year is void to subsequent purchasers unless they have notice of such or unless it is filed with the county clerk.39

Landlord's Duties--Section 319

Texas statutes do not require the landlord to make any repairs or pay the tenant for such in the absence of an agreement of such.40

Duties of Drivers--Section 319

Until the forty-seventh session of the Texas legislature the speed limit was forty-five miles per hour for drivers on the highway and twenty miles per hour within the limits of a city. The present law sets the speed limit at

37Ibid., p. 876. 38Ibid., p. 790.
39Ibid., Vol. XXVII, p. 67. 40Ibid., p. 250.
sixty miles per hour during the daytime and fifty-five miles per hour during the nighttime. Daytime is referred to as a half hour before sunrise to a half hour after sunset, and nighttime is any other time. The motorist is also lawfully bound to exercise due care under existing circumstances. The speed limit within the city limits of any city is thirty miles per hour. 41

Traffic Regulations—Section 321

Texas requires that every motor vehicle shall be equipped with a bell, gong, horn, whistle, or other device in good working order capable of making a sound with enough volume to warn an approaching vehicle or such. There are also provisions requiring lights and proper brakes. The maximum penalty for not being properly equipped.

The uniform signaling as used in many states is not the law in Texas. The person operating any vehicle upon any public highway is supposed to give a plainly visible or audible signal of his intentions of turning, stopping, or changing of course to any other vehicle that may be reasonably affected by such action. There is no State law dealing with streets, lanes, etc., other than that a vehicle being driven slowly should be kept to the right. 42

... the gross weight is ascertained by adding forty to the distance in feet between the first and last axles of a vehicle or combination of vehicles, and multiplying this sum by seven hundred. Provided, however, that the gross weight shall never exceed thirty-eight thousand pounds.\textsuperscript{43}

From the above excerpt from House Bill number 19, the present weight limit for any truck can be ascertained. This bill became a law March 24, 1941, when the Governor signed it. This allows quite an increase in the gross weight permitted for trucks in lawful highway traffic.

\textbf{Punishment---Section 329}

Texas has punishment laws which vary with different offenses. They are stated so as to give the maximum penalty of one hundred dollars for the violation of not having certain car accessories. In some instances there is a minimum as well as a maximum penalty given, as in the case of driving while intoxicated, which gives a minimum jail sentence of thirty days and a maximum penalty of a term of two years or a minimum fine of fifty dollars and a maximum of five hundred dollars or both.\textsuperscript{44}

\textbf{Arson---Section 330}

The Texas law defines arson as the burning of any house which it defines as any building, edifice, or structure enclosed with walls and covered. An owner is not guilty of


\textsuperscript{44}Vernon's Penal Code, op. cit., Vol. II, Art. 799, 802.
arson unless the fire is within a town or city, or when it is insured, or if there is danger of damage to some individual or to another's house. The penalty for arson is a term in the penitentiary of not less than two years nor more than twenty years.\textsuperscript{45}

\textbf{Extortion--Section 331}

The Texas law interprets extortion as consisting of any taking of money or property by force or intimidation.\textsuperscript{46}

\textbf{Monopolies--Section 335}

Texas' antitrust statutes denounce and make illegal, void and criminally punishable almost every conceivable kind of combination or contract which tends to restrain trade or commerce.\textsuperscript{47}

\textbf{State Courts--Section 347}

The Texas court system consists of the following: the supreme court, the court of criminal appeals, the commissioners' courts attached to the supreme court and the court of criminal appeals, the courts of civil appeals, the district courts, the county courts, the commissioners' courts (for the administration of the affairs of the counties), the justices' courts, and the corporation courts.\textsuperscript{48}

\textsuperscript{45}\textit{Ibid.}, Article 1316. \textsuperscript{46}\textit{Ibid.}

\textsuperscript{47}\textit{McKinney, op. cit.}, Vol. XXIX, p. 746.

\textsuperscript{48}\textit{Ibid.}, Vol. XI, p. 704.
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