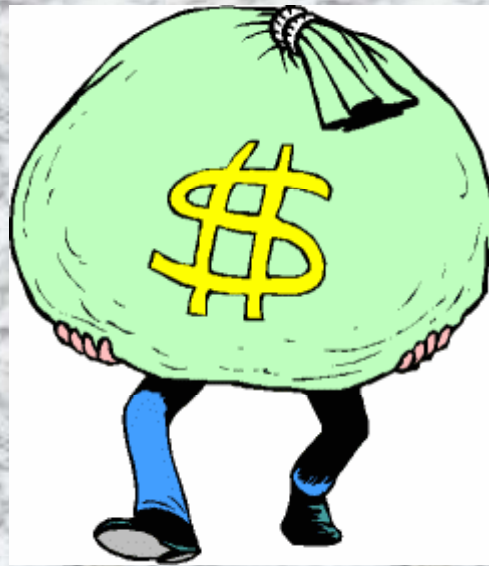


Unlimited Restitution: Are You Kidding?



Ed Spillane

Presiding Municipal Court Judge

College Station, TX

What is Restitution?

- Money
- Damages
- Civil?
- Make the Victim Whole
- Why?
- How many have assessed Restitution?

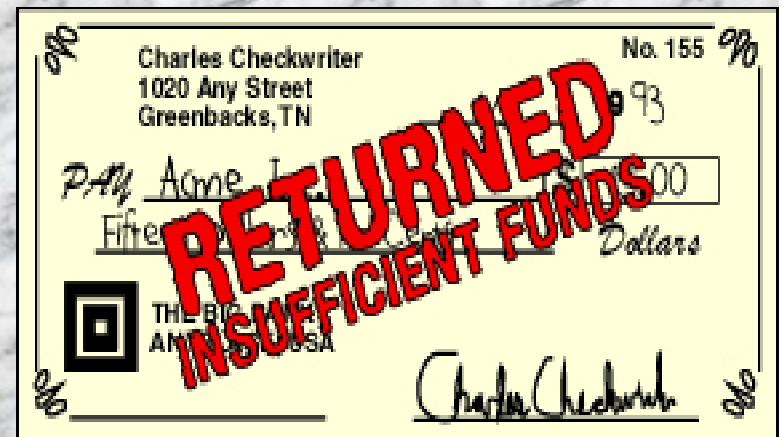
HISTORY

- Avoid blood feud
- Criminal vs. Civil



HB 485

- Amends T.P.C. Sec. 32.41(e)
- Amends T.C.Cr.P. Art. 45.041 (b) and Creates (b-1)
- Is the impact just on hot checks????



First: Impact on Bad Check Cases

T.P.C. Sec. 32.41

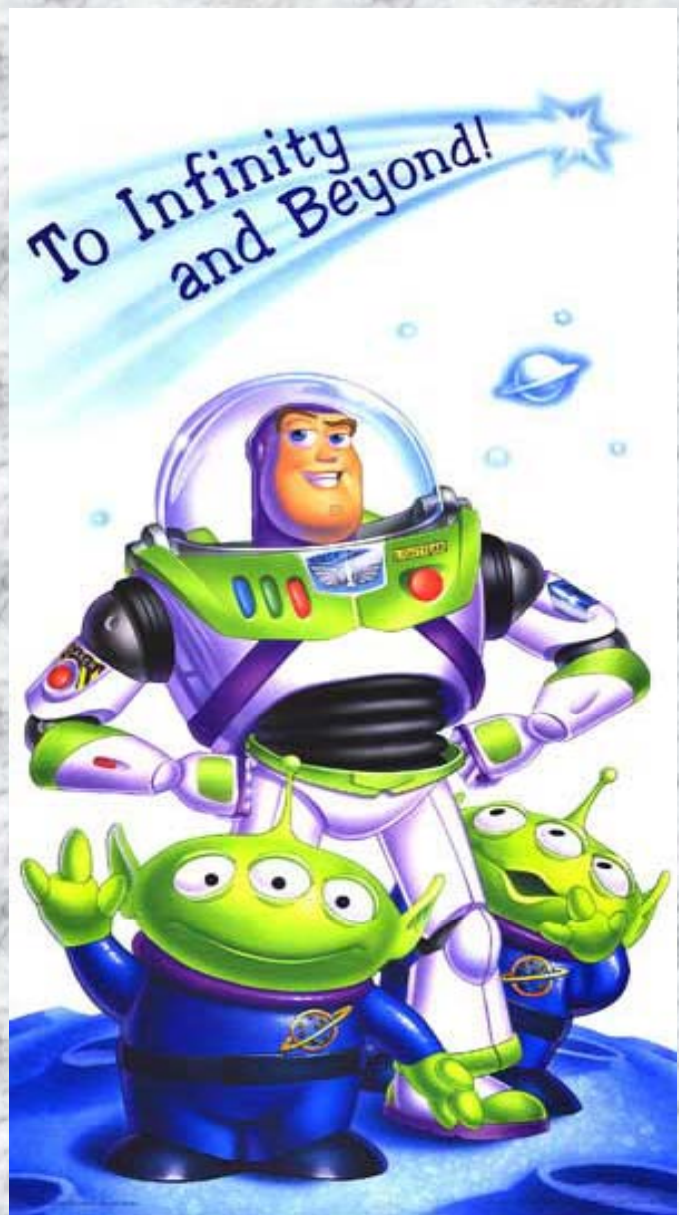
T.C.Cr.P. Art. 45.051 (b-1)



BIG IMPACT?

- T.C.Cr.P. Art. 45.041 (b)(2): if applicable, to make restitution to any victim of the offense
- Eliminates "in an amount not to exceed \$500"





Deferred Disposition

- Art. 45.051(b)(2):
- Pay restitution to the victim of the offense
- in an amount not to exceed
- **THE FINE ASSESSED**



Some More Mechanics Of Granting Restitution

- Art. 42.01 (25) Tex. C. Crim. Proc.
- Note: AG Opinion No. GA-220, July 26, 2004



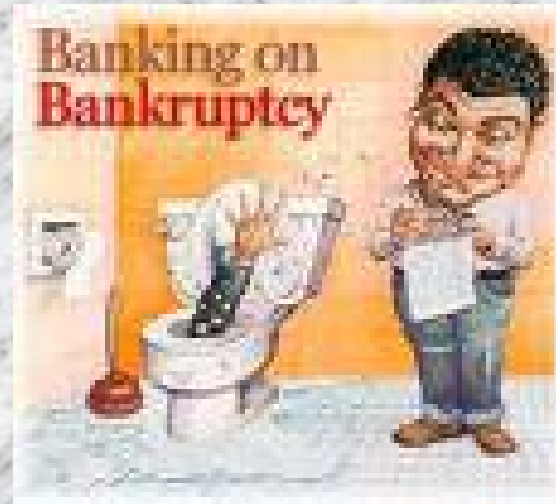
TIME PAYMENT FEE

- **Time Payment Fee**, Sec. 133.103
Local Gov. Code: “A person convicted of an offense shall pay...a fee of \$25 if the person has been convicted of a...misdemeanor; and pays any part of fine, court costs, or **restitution** on or after the 31st day after the date on which a judgment is entered assessing the fine, court costs, or restitution”.

BANKRUPTCY

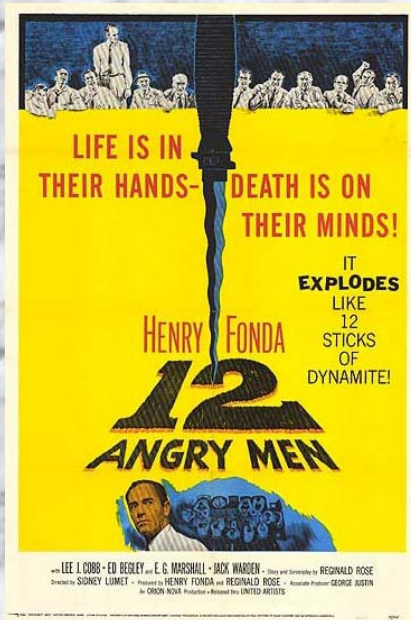
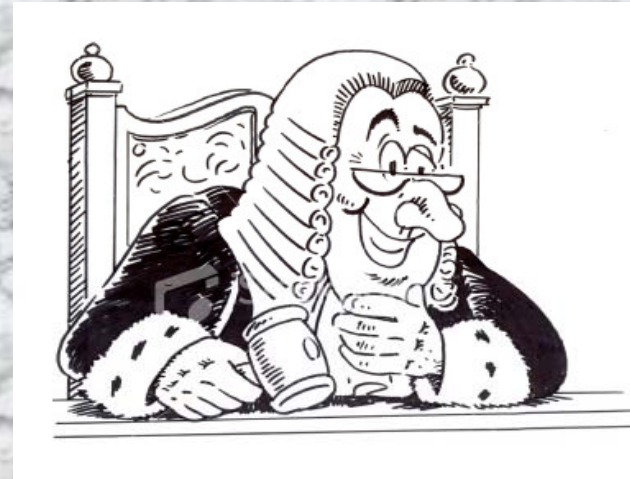
- What happens to restitution owed to victim? **Kelly v Robinson**, 479 US.S 36 (1986); **Cabla v. State**, 6 S.W.3d 543 (Tex.Crim.App. 1999).

Bankruptcy



Who Assesses Restitution????

- JUDGE
- JURY



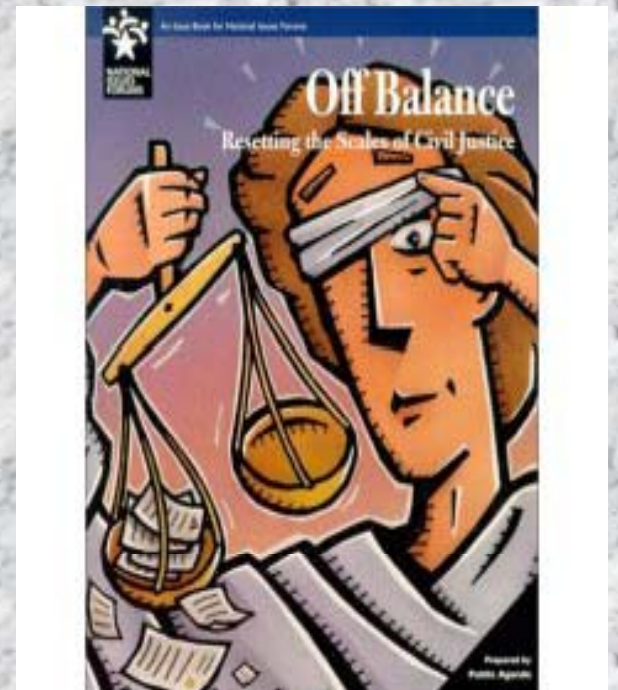
Ability To Pay

- What role does this play in assessing restitution?
- Does it matter whether restitution is being paid upon conviction or as a condition of deferred disposition?



What Is The Standard

- Factual Basis
- Art. 42.037 (k)
Tex.C.Crim. Proc.
- Preponderance of the Evidence



MULTIPLE DEFENDANTS



"No Insurance"

- Can restitution be ordered?
- Who is the victim ?
- Causal relationship to the offense?



More Offenses

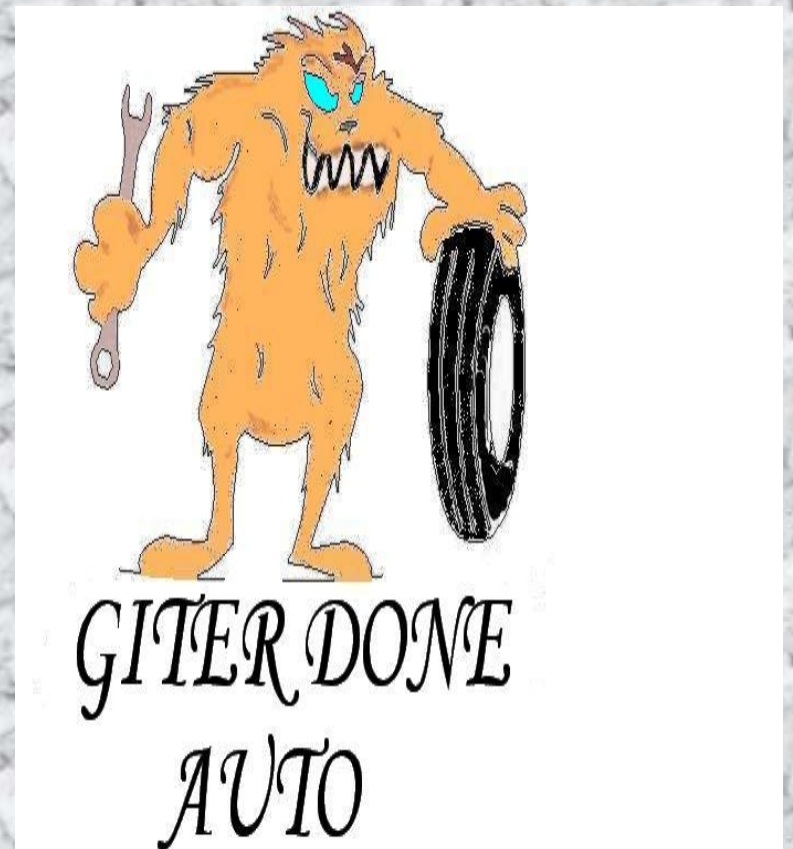
- Failure to Control Speed
- Reckless Damage
- Paying Insurance Company?





THEFT

- Theft of Service
- Rodriguez v. State
- Interest



Theft Limits



DISORDERLY CONDUCT



- Assault
- Dog Bite
- High Weeds



Restitution Liens

- Art. 42.22 Tex. C. Crim. Proc.

