

Standards of Review in Texas

Professor Lauren Simpson

*For John Black Moot Court Competition
preparation*

Spring 2017



In a Nutshell ...



Today You Will Learn About

- I. The Categories of Trial-Court Decisions,
- II. Standards of Review Generally, and
- III. The Main Standards of Review in Texas.

I. The Categories of Trial-Court Decisions



Three Categories of Decisions*

1. Decisions of law (judge)

- Analyzed w/o reference to particular set of facts

2. Decisions of fact (judge or jury)

- Decided based on evidentiary record (w/o reference to rule of law)

3. Decisions left to court's discretion (judge)

- Generally, matters of equity or matters of procedure and case management

* Linda H. Edwards, *Legal Writing & Analysis* (3d ed. 2011).

And Now, the \$20K Question ...

**So why do we care about
the types of decisions
(judge or jury)?**



II. Standards of Review Generally



Standard of Review (“SOR”): In General

1. **What?** Defines the parameters of COA’s authority to determine error
 - Amount of **scrutiny** used to review the judgment
 - Amount of **deference** to trial court’s decision
2. **Why?** You *must* understand SORs to determine strength of appealable issues.

See next slide for resources →

Standard of Review (“SOR”): In General

3. Resources

- W.Wendell Hall, *Standards of Review in Texas*, 42 St. Mary’s L.J. 3 (2010): **highly recommended!**
- Hon. James A Baker, *Harnessing the Standards of Review* (Sept. 2004)
- You may contact me for a few other resources: ljsimpso@central.uh.edu.

Standard of Review: in General

4. **How phrased?** Favorably phrased for client.
5. **Length?**

Standard of Review: in General

4. Where?

- **In appellate brief:**
 - Same SOR in all Argument sections: in or before/after thesis §
 - Different SOR in Argument sections: in R/[e] of CR[e]AC

Standard of Review: in General

4. Where?

- **In oral argument:**
 - Same SOR in all sub-issues that you're discussing: right after the roadmap of your sub-issues
 - Different SOR in sub-issues that you're discussing: in your statement of the law for each issue

Standard of Review: in General

6. How used?

- “Work it!”
 - Why you win under SOR
 - Why opponent loses under SOR
- Tie conclusions, discussion back into SOR.

III. The Main Standards of Review in Texas



SOR in Texas: **Overview**

Most common SORs in Texas:

- Abuse of discretion
- *De novo*
- Sufficiency:
 - Legal sufficiency
 - Factual sufficiency

SOR in Texas:

I. Abuse of Discretion

- Deference level? High
- For what?
 - Discretionary decisions (category 3 from slide 4)
 - Generally, procedural or other trial-management decisions w/in court's discretion
- Examples
 - Evidence
 - Discovery
 - Dismissal/stay of case; denial of continuance
 - Sanctions

SOR in Texas:

I. Abuse of Discretion

- **Standard?** Abuse of discretion = ruling that is
 1. “w/o reference to any guiding rules and principles” *or*
 2. “arbitrary or unreasonable.”

SOR in Texas:

I. Abuse of Discretion

Put another way:

- Rules outside permissible choices
- Fails to exercise discretion when required
- Makes ruling w/o sufficient record info.
- Otherwise errs in its exercise of discretion, e.g.,
 - Doesn't consider relevant factor
 - Relies upon improper factor
 - Unreasonably exaggerates relevant factor

SOR in Texas:

2. De Novo

- **Deference level?** Lowest
 - COA gives no deference to trial court's decision.
 - COA decides according to its own view of the law.
- **For what?** Decisions of law (category I from slide 4)
- **Examples**
 - Standing
 - Subject-matter jurisdiction
 - Ambiguity of contract
 - Statutory construction

SOR in Texas:

3. Legal and Factual Sufficiency Review

- Deference level? High
- For what? Decisions of fact by judge or jury (category 2 from slide 4)
- Standards?
 - Standard depends on Legal or factual sufficiency, challenge, civil or criminal case, & who had burden of proof at trial.
 - Basically, appellate court determines whether sufficient level of evidence supports challenged factual finding.

Burden below	Legal Sufficiency	Factual Sufficiency
Appt.	<p>Name: “matter-of-law” challenge</p>	<p>Name: “great-weight-and-preponderance” challenge</p>
	<p>Meaning/Standard: Basically, appt. must show that the evidence conclusively establishes element or factor against which fact-finder found.</p>	<p>Meaning/Standard:</p> <ol style="list-style-type: none"> 1. Appt. must show that adverse finding is against great weight & preponderance of evidence. 2. First, COA examines record to determine if some evidence supports finding; if yes, COA then considers whole record to determine if (a) finding so contrary to overwhelming weight & preponderance of evidence that it’s clearly wrong and manifestly unjust or (b) great preponderance of evidence supports finding’s nonexistence. 3. COA reverses only if factfinder’s failure to find is against great weight & preponderance of evidence.
Appe.	<p>Name: “no-evidence” challenge</p>	<p>Name: “insufficient-evidence” challenge</p>
	<p>Meaning/Standard: Basically, appellant must show that no evidence supports the adverse finding.</p>	<p>Meaning/Standard:</p> <ol style="list-style-type: none"> 1. Appt. must show that insufficient evidence supports adverse finding. 2. COA examines & weighs all evidence, pro and con. 3. COA then sets aside verdict only if it is so contrary to overwhelming weight of evidence that it’s clearly wrong and unjust. Put another way, is supporting finding so weak, and/or contrary evidence so overwhelming in weight & preponderance, that finding should be set aside for being clearly wrong and unjust?

SOR in Texas:

Mixed Questions of Law & Fact

- **For what?** When trial court wears two hats in ruling:



- Fact-finder: determines facts, resolves factual disputes, determines witness credibility



- Decision-maker on law: applies facts to law
- **Standards?**
 - **Findings of historical fact**: deferential review
 - **Conclusions of law**: *de novo* review

And now for a quick practice!*



* Each question is answered on the slide following it. FYI: Please email Professor Simpson if you would like two additional practice exercises on SOR—including answers with explanations (ljsimpso@central.uh.edu).

Which Standard of Review Applies?

Question 1

- During trial, the judge refuses to admit documents that you offer into evidence because they are hearsay.
- You object at trial.
- The judge overrules your objection.
- On appeal, you assert that the excluded documents (a) are *not* hearsay and (b) undoubtedly prove Defendant's intent to evict.

Which Standard of Review Applies?

Question 1

Answer to Question 1:

Abuse of discretion

Which Standard of Review Applies?

Question 2

- In pretrial discovery, Defendant refused to answer 10 of 30 interrogatories.
- You moved to compel Defendant to answer the 10 interrogatories.
- The trial court decided that 5 of the interrogatories were proper and 5 were objectionable. The court ordered Defendant to answer the 5 proper interrogatories and refused to order Defendant to answer the other 5.
- On appeal, you complain of the trial court's order.

Which Standard of Review Applies?

Question 2

Answer to Question 2:

Abuse of discretion

Which Standard of Review Applies?

Question 3

- The trial court grants the defendant's plea to the jurisdiction (i.e., motion to dismiss for lack of jurisdiction) on the basis that the defendant, who is the State of Texas, is entitled to immunity from suit because no statute allows it to be sued.
- You have appealed the trial court's ruling on the jurisdictional plea.

Which Standard of Review Applies?

Question 3

Answer to Question 3:

De novo

Which Standard of Review Applies?

Question 4

- In a bench trial, the plaintiff offers three third-party witnesses' testimony that the traffic light was red when defendant entered the intersection and struck plaintiff's car. The defendant testifies, with some equivocation, that the traffic light was green. But his testimony is corroborated by the light's electronically stored data.
- The judge renders a take-nothing judgment in the defendant's favor on the plaintiff's negligence claim.
- The judge enters findings of fact and conclusions of law, including a finding of fact that the light was green.
- The plaintiff appeals and wishes to attack the fact-finding that the light was green.

Which Standard of Review Applies?

Question 4

Answer to Question 4:

Factual sufficiency (“great-weight-and-preponderance” challenge)