

LIABILITY UNDER THE TEXAS TORT CLAIMS ACT

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The King Can Do No Wrong

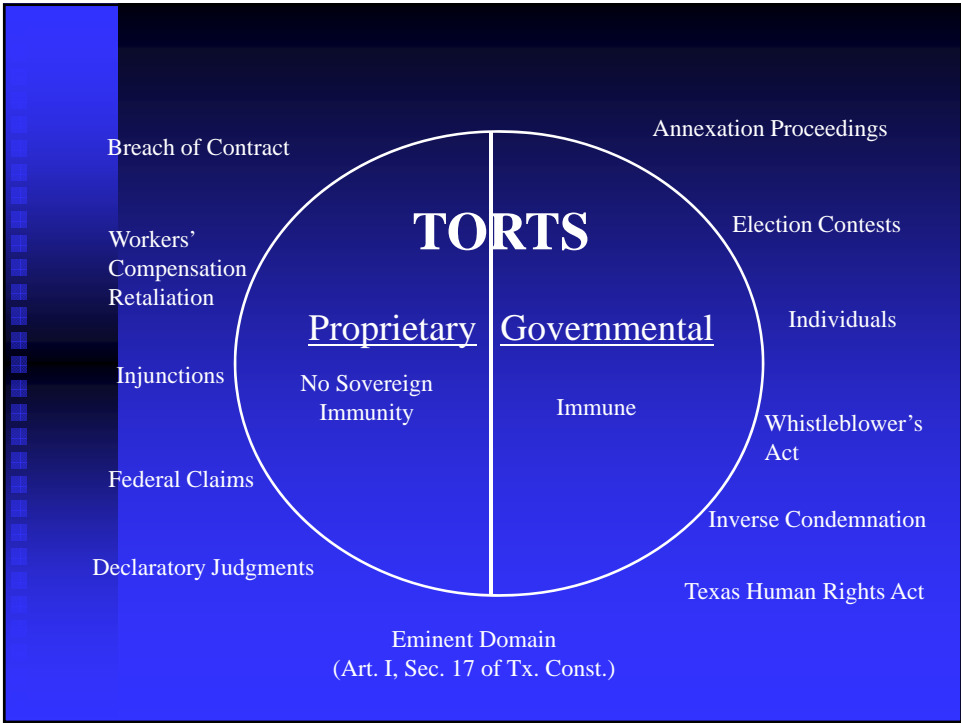
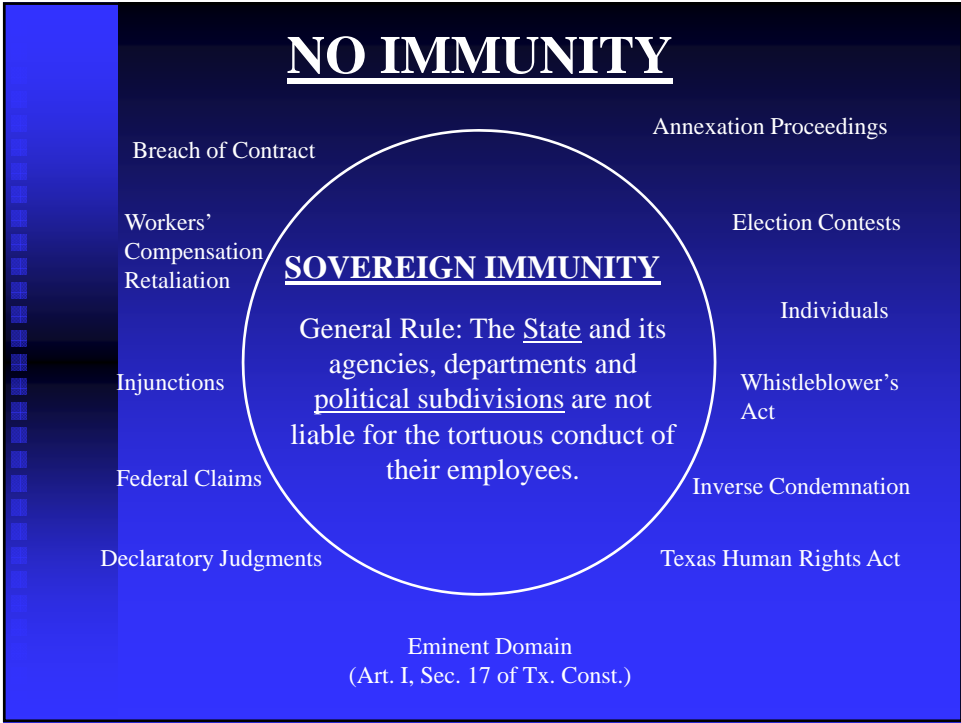
Sovereign Immunity

Under common law, state and political subdivisions are not liable for acts of their agents or officers.

Official Immunity

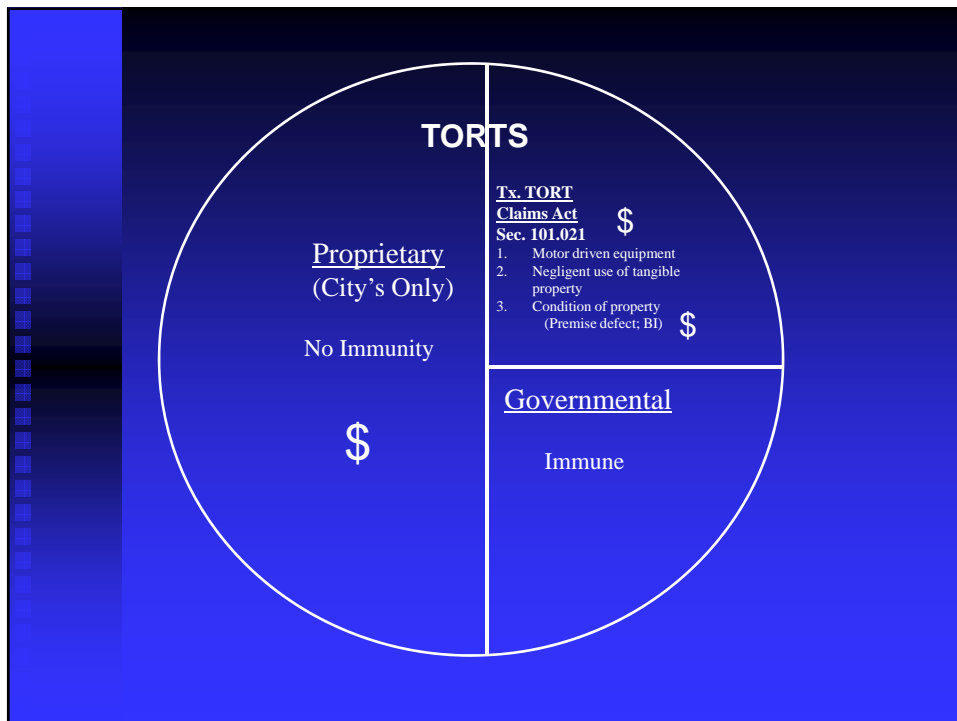
Under common law, public officials and public servants are immune from liability if:

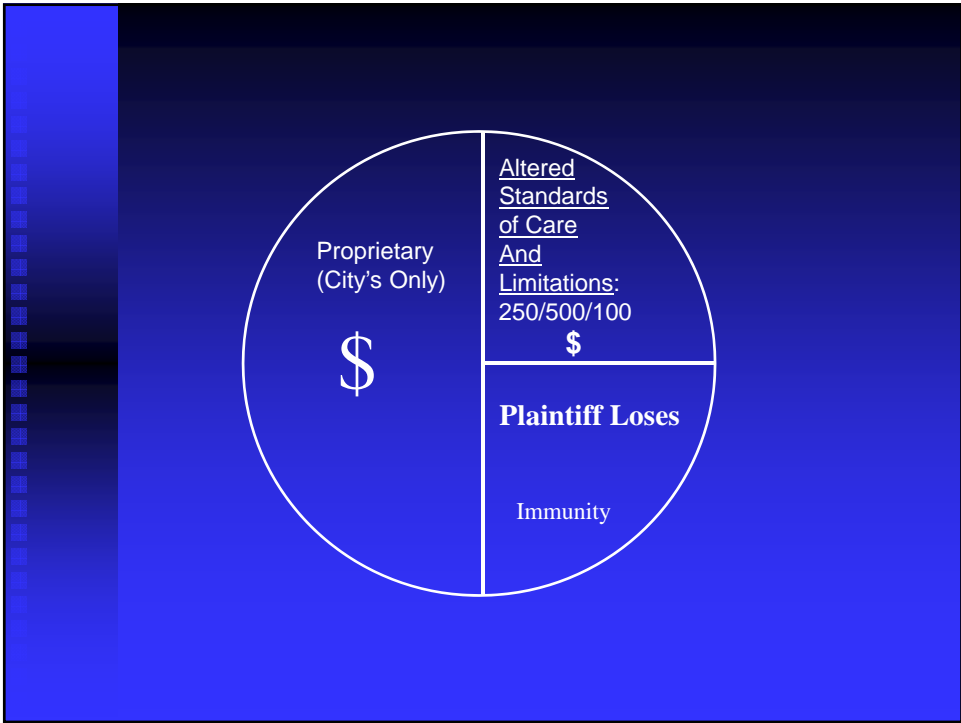
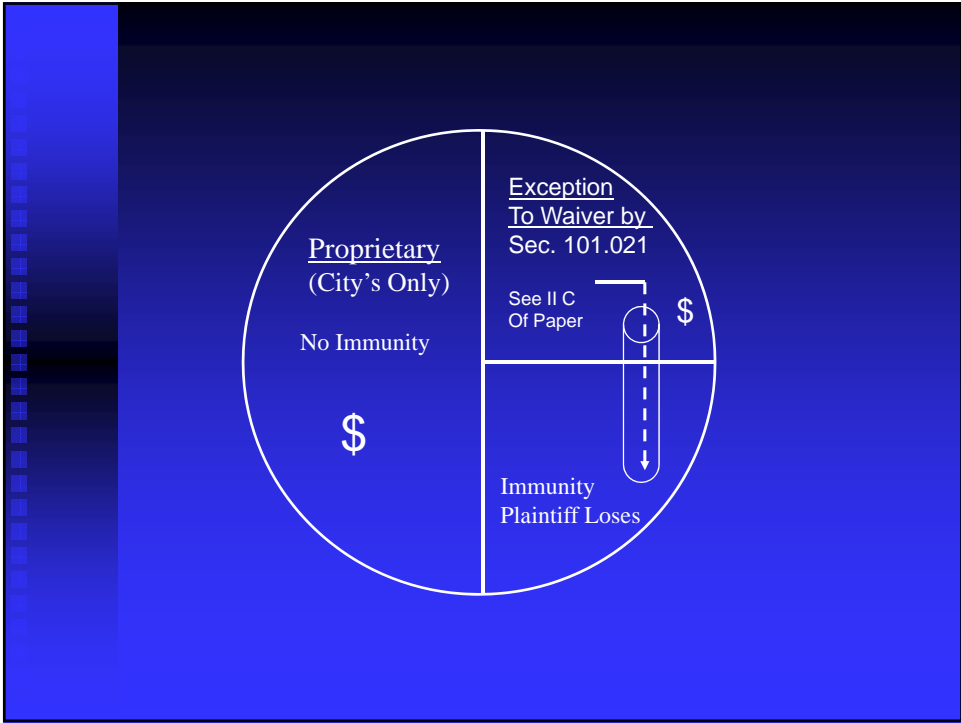
1. They are performing a duty within the scope of their duties;
2. They are performing a discretionary duty; and,
3. They act in good faith.



Tort Claims Act

- Passed in 1969 by the Texas Legislature.
- Waives sovereign immunity for certain acts.
- Limits the amount of damages that can be recovered where immunity is waived.





GOVERNMENTAL FUNCTIONS

Cont'd

- § 101.0215. Liability of a Municipality
 - a) A municipality is liable under this chapter for damages arising from its governmental functions, which are *those functions that are enjoined on a municipality by law and are given it by the state as part of the state's sovereignty, to be exercised by the municipality in the interest of the general public*, including but not limited to:

Cont'd.

- 1) Police and fire protection and control;
- 2) Health and sanitation services;
- 3) Street construction and design;
- 4) Bridge construction and maintenance and street maintenance;
- 5) Cemeteries and cemetery care;
- 6) Garbage and solid waste removal, collection, and disposal;
- 7) Establishment and maintenance of jails;

Cont'd.

- 8) Hospitals;
- 9) Sanitary and storm sewers;
- 10) Airports;
- 11) Waterworks;
- 12) Repair garages;
- 13) Parks and zoos;
- 14) Museums;
- 15) Libraries and library maintenance

Cont'd.

- 16) Civic, convention centers, or coliseums;
- 17) Community, neighborhood, or senior citizen centers;
- 18) Operation of emergency ambulance service;
- 19) Dams and reservoirs;
- 20) Warning signals;
- 21) Regulation of traffic;
- 22) Transportation systems;

Cont'd.

- 23) Recreational facilities, including but not limited to swimming pools, beaches, and marinas;
- 24) Vehicle and motor driven equipment maintenance;
- 25) Parking facilities;
- 26) Tax collection;
- 27) Firework displays;
- 28) Building codes and inspection;
- 29) Zoning, planning, and plat approval;

Cont'd.

- 30) Engineering functions;
- 31) Maintenance of traffic signals, signs, and hazards;
- 32) Water and sewer service;
- 33) Animal control;
- 34) Community development or urban renewal activities;
- 35) Latchkey programs conducted exclusively on a school campus; and
- 36) Enforcement of land use restrictions.

PROPRIETARY FUNCTIONS

(City's Only)

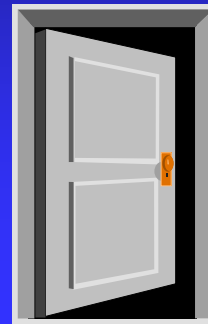
Cont'd.

- b. This chapter does not apply to the liability of a municipality for damages arising from its proprietary functions, which are *those functions that a municipality may, in its discretion, perform in the interest of the inhabitants of the municipality*, including but not limited to:
 - 1) The operation and maintenance of a public utility;

Cont'd.

- 2) Amusements owned and operated by the municipality; and
- 3) Any activity that is abnormally dangerous or ultrahazardous.

THE WAIVER OF IMMUNITY



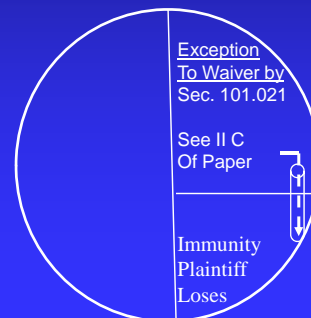
Waiver of Sovereign Immunity for Governmental Functions

- §101.021 of the Act
- Operation or use of a motor-driven vehicle or motor-driven equipment
- Condition or use of a tangible personal property
- Condition of real property
- Only if employee personally liable under Texas law

Damages Recoverable

- Motor-driven vehicle or equipment:
 1. property damages
 2. personal injury
 3. death
- Tangible personal property or real property
 1. personal injury
 2. death

EXCEPTIONS TO THE WAIVER OF IMMUNITY



Cont'd

§ 101.052. Legislative

This chapter does not apply to a claim based on an act or omission of the legislature or a member of the legislature acting in his official capacity or to the legislative functions of a governmental unit.

Cont'd

§ 101.053. Judicial

- (a) This chapter does not apply to a claim based on an act or omission of a court of this state or any member of a court of this state acting in his official capacity.
- (b) This chapter does not apply to a claim based on an act or omission of an employee in the execution of a lawful order of any court.

Cont'd

§ 101.055. Certain Governmental Functions

This chapter does not apply to a claim arising:

in connection with the assessment or collection of taxes by a governmental unit.

Cont'd

§ 101.056. Discretionary Powers

This chapter does not apply to a claim based on:

- 1) the failure of a governmental unit to perform an act that the unit is not required by law to perform; or
- 2) a governmental unit's decision not to perform an act or on its failure to make a decision on the performance or nonperformance of an act if the law leaves the performance or nonperformance of the act to the discretion of the governmental unit.

Cont'd

§ 101.057. Civil Disobedience and Certain Intentional Torts

This chapter does not apply to a claim:

- 1) based on an injury or death connected with any act or omission arising out of civil disobedience, riot, insurrection, or rebellion; or
- 2) arising out of assault, batter, false imprisonment, or any other intentional tort, including a tort involving disciplinary action by school authorities.

Cont'd

§ 101.059. Attractive Nuisances

This chapter does not apply to a claim based on the theory of attractive nuisance.

Cont'd

§ 101.062. 9-1-1 Emergency Service

- b) This chapter applies to a claim against a public agency that arises from an action of an employee of the public agency or a volunteer under direction of the public agency and that involves providing 9-1-1 service or responding to a 9-1-1 emergency call only if the action violates a statute or ordinance applicable to the action.

Cont'd

§ 101.066. Computer Data Failure

This chapter does not apply to a claim for property damage caused by a computer data failure as described by Section 147.003.

ALTERED STANDARDS AND OTHER LIMITATIONS

§ 101.101. Notice

- a) A governmental unit is entitled to receive notice of a claim against it under this chapter not later than six months after the day that the incident giving rise to the claim occurred. The notice must reasonably describe:
- (1) the damage or injury claimed;
 - (2) the time and place of the incident; and
 - (3) the incident.

§ 101.055 (2)

This chapter does not apply to a claim arising:

- from the action of an employee while responding to an emergency call or reacting to an emergency situation if the action is in compliance with the laws and ordinance applicable to emergency action, or in the absence of such a law or ordinance, if the action is not taken with conscious indifference or reckless disregard of the safety of others; or
- from the failure to provide or the method of providing police or fire protection.

§ 101.022. Duty Owed: Premise and Special Defects

- a) If a claim arises from a premise defect, the governmental unit owes to the claimant only the duty that a private person owes to a license on private property, unless the claimant pays for the use of the premises.

Cont'd.

- b) The limitation of duty in this section does not apply to the duty to warn of special defects such as excavations or obstructions on highways, roads or streets.

Cont'd

Invitee: The landowner has a duty to keep the premises in reasonably safe condition and to inspect the premises to discover any latent (hidden) defects and to make safe any defects or give adequate warning.

Licensee: The landowner owes a duty not to injure him/her willfully, wantonly, or through gross negligence; or to warn of or to make safe dangerous latent (hidden) conditions of which the landowner has actual knowledge.

Cont'd

Trespasser:

A trespasser takes the property as he finds it, and the owner's duty is only to refrain from injuring the visitor through willful, wanton, or grossly negligent conduct.

Limits of Damages

■ Cities and State:

1. \$250,000 for each person and \$500,000 for each single occurrence for bodily injury or death
2. \$100,000 for each single occurrence for property

■ All other Governmental Entities:

1. \$100,000 for each person and \$300,000 for each single occurrence for bodily injury or death
2. \$100,000 for each single occurrence for property

Cont'd

§ 101.024. Exemplary Damages

This chapter does not authorize exemplary damages.

Summary

- Is the entity involved in a governmental function?
- Do facts meet the waiver of §101.021?
- Is immunity re-established by exceptions to waiver?
- Did the governmental entity receive notice within six months?

Summary (cont).

- Are the standards of care altered?
- What are the limits of liability?
- Analyze claim using traditional concepts of comparative negligence