

# Recent State Cases of Interest to Cities

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# Takings

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*Harris Cnty. Flood Control Dist. V. Kerr*, No. 13-0303, (Tex. June 17, 2016).

*The elusive Motion for Rehearing.*

Flood control efforts + flood damage = liability?

# Takings: *Harris County*

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## *1<sup>st</sup> Opinion:*

Liability because government tried and failed.

Court held that sufficient evidence existed to raise a fact issue:

1. County knew flooding could happen
2. Approved development
3. Did not mitigate development



# Takings: *Harris County*

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# Governmental Immunity: *Harris County*

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## Rehearing:

*No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person.*

1. Affirmative conduct (approving development?)
2. Specific act caused identifiable harm
3. Public Use (insufficient regulation)
4. Intentional

# Governmental Immunity: *Harris County*

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## Rehearing:

*“The theory [allowing liability in this case] lacks any discernible limiting principle and would appear to cover many scenarios where the government has no designs on a particular plaintiff’s property, but only knows that somewhere, someday, its routine governmental operations will likely cause damage to some as yet unidentified private property.”*

# *Governmental Immunity—Tort*

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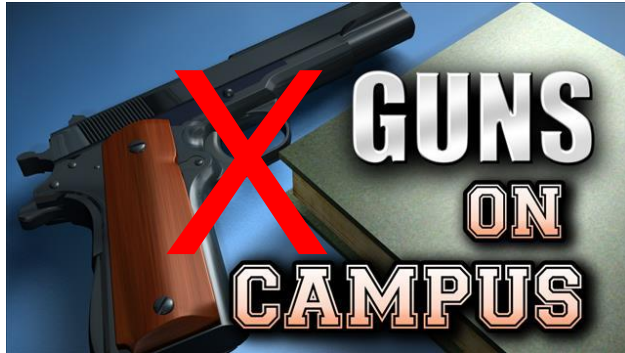
*Sampson v. University of Tex.*, No. 14-0745  
(Tex. June 10, 2016). The real danger facing  
UT Law School Professors. . . .





# *Governmental Immunity—Tort*

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# *Governmental Immunity—Tort*

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## *Tort Claims Act: Trip and Fall*

- Real Property v. Tangible Personal Property
- Actual knowledge of unreasonable risk of harm



*Did UT know about the cord placed by a third party?*

# *Governmental Immunity—Tort*

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## *Tort Claims Act: Trip and Fall*

### Takeaways:

- Cannot prevail on both real property and personal property tort claims for same incident
- Slip and fall cases are generally premises defect/real property
- Real property cases: have to show actual knowledge
- If you didn't see it, you can't be responsible for it.
- “proximity of the employees is no evidence of actual knowledge”

*Dissent: Justice Lehrmann (UTLAW '82):* there was enough evidence of actual knowledge to get this case past plea to the jurisdiction

# Governmental Immunity-Tort

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*City of Dallas v. Sanchez*, No. 15-0094 (Tex. July 1, 2016) (per curiam).

- Crazy facts
- 911 call—no responder arrived at correct apartment—injured individual died of drug overdose
- Claim that 911 system malfunction caused death

# Governmental Immunity-Tort

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*City of Dallas v. Sanchez*, No. 15-0094 (Tex. July 1, 2016).

*Causal Nexus:*

*“Sanchez’s death was caused by drugs, the passage of time, and misinterpretation of information.”*

# Animal Control—Strickland Part II

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*Lira v. Greater Houston German Shepherd Dog Rescue, Inc., No. 14-0964, 2016 WL 1267745 (Tex. April 1, 2016) (per curiam).*

*Another dog tail.*



# Animal Control—Strickland Part II

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## *Lira v. Greater Houston German Shepherd Dog Rescue, Inc.*

- City ordinances allow either euthanization or adoption after seven days
- City—animal who is adopted and not retrieved within 30 days loses possession of animal
- *Strickland*: “a beloved companion dog is not a fungible, inanimate object like, say, a toaster.”
- Dictionary, dictionary, dictionary: ordinances do not divest owner of dog ownership

# Tort Claims Act-Dog Bite

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*City of Houston v. Roman*, No. 01-15-01042-CV, 2016 WL 3748851 (Tex. App.—Houston [1st Dist.] July 12, 2016) (mem. op.).



Jake is an 8-yr-old Belgian Malinois. He is a smaller canine weighing about 55 lbs., but don't let the size fool you. He is what we all a leaper. When he is commanded to go on attack he will leap 10-12 feet to hit the suspect hard. You would never know Jake is 8-yrs-old if you were to see him in action. He has a lot of energy and loves to work. Jake has the most captures on dayshift.



# Tort Claims Act-Dog Bite

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*City of Houston v. Roman*, No. 01-15-01042-CV, 2016 WL 3748851 (Tex. App.—Houston [1st Dist.] July 12, 2016) (mem. op.).

- Used dog to locate kid, not bite him, so not intentional.
- Properly pled negligent use of Jake the dog.
- Properly denied plea to the jurisdiction.

# Sign Regulation: *Reeding* Texas Highway Beautification Act

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*Auspro Enterprises, LP v. Texas Dep't of Transp.*, 03-14-00375-CV, 2016 WL 4506161, at \*1 (Tex. App.—Austin Aug. 26, 2016, no. pet. h.).



# Texas Stop Sign

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In *Auspro*, the court stated that “...under Reed's framework, the Texas Act's outdoor-advertising regulations and associated Department rules are, on their face, content-based regulations of speech.”



That is a statute's (or ordinance's) death sentence.

» Too many sign exclusions equals underinclusive

# Life after *Reed*

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However: “Also, the provisions in Subchapter I are not affected by our decision here because they authorize the State to regulate commercial speech along certain specified highways, specifically off-premise signs displaying messages regarding “goods, services, or merchandise.”



# More Signs

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*Reagan Nat'l Advert. of Austin, Inc. v. City of Austin*, No. 03-15-00370-CV, 2016 WL 3390850 (Tex. App.—Austin June 15, 2016).

Is a billboard registration fee a tax?

Federal court says yes. Issue preclusion.

*It's a tax.*

# More Signs

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*Lamar Advantage Holding Co. v. City of Stephenville*, No. 11-14-00133-CV, 2016 WL 3573931 (Tex. App—Eastland June 9, 2016) (mem. op.).

- Trespass to try title case.
- “*Reservations from and exceptions to Conveyance and Warranty*” –unrecorded lease to BYO
- Standard four corners: did the deed allow previous owner to continue leasing the property for billboards? Court answered No.

# Civil Forfeiture

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*State of Texas v. One (1) 2004 Lincoln Navigator*, No. 14-0692, 2016 WL 3212490 (Tex. June, 10, 2016).

- Even without a criminal conviction they can keep your car.
- Even if the search is illegal, they can keep your car.
- Just have to prove it's Ch. 59 contraband.

*2009 Black Infiniti G3S v. State of Texas*,  
No. 02-14-00342-CV, 2016 WL 4538553  
(Tex. App.---Fort Worth Aug. 31, 2016).





# Age Discrimination

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*Bazaldua v. City of Lyford*, No. 13-16-00004-CV, 2016 WL 4578409 (Tex. App— Corpus Christi Sept. 1, 2016) (mem. op.).

Texas Commission on Human Rights Act.

- proof of age discrimination
- “Viejo” (not proximate in time)
- Replaced by an older worker

# Chapter 614 Complaint

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*Paske v. Fitzgerald*, No. 01-15-00631-CV, 2016 WL 3459217 (Tex. App.—Houston [1st Dist.] June 23, 2016).

- Supervisor terminated based on misconduct he observed.
- Not every adverse employment action against a peace officer has to be accompanied by a 614 complaint.

# Thank you!

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