

# LIABILITY

## An Introduction to the Texas Tort Claims Act

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**Slater C. Elza**

◆ Slater.Elza@uwlaw.com ◆

◆ 806-376-5613 ◆

[www.uwlaw.com](http://www.uwlaw.com)

# Good Resources --

- ***Political Subdivision Liability Under Texas Tort Claims Act***, Shaunessy, Ranis and Lochridge 2012
- ***Sovereign Immunity, Texas Tort Claims Act***, Evans, Gillespie, McKamie 2017
- ***Texas Tort Claims Act Basics***, Evans, Gillespie, McKamie and Mueller

# Texas Tort Claims Act (“TCA”)

- Nothing to do with Federal claims.
- Governmental units have sovereign immunity (sometimes referred to as “governmental immunity”) absent a constitutional or statutory waiver of that immunity.
- TCA enacted in 1969 and waived sovereign immunity for a governmental unit in certain circumstances – limited waiver.
- Where TCA, constitution or other statute do not specifically waive immunity, common law immunity remains.

# Texas Tort Claims Act (“TCA”)

- Granting governmental units sovereign immunity serves several purposes:
  - Protects governmental time and resources from private litigation.
  - Protects government from fraudulent (or frivolous) suits that otherwise may arise because of the perceived “deep pockets” of government entities.
  - Precludes second guessing certain governmental actions or decisions.

# TCA Pleadings

- Plaintiff bears the burden of alleging and proving facts affirmatively showing that the court has subject matter jurisdiction.
- Suit will be dismissed if a plaintiff cannot point to a clear and unambiguous waiver of immunity.
- Ambiguity in the statutory waiver is construed against the plaintiff.

# Governmental Unit Claims

- By filing suit, a governmental unit waives immunity from suit.
  - The purpose of sovereign immunity is to protect tax resources being used to defend suits and pay judgments.
- Relates to claims that are connected to city's claims for damages.
- Court does not acquire jurisdiction over claims that seek damages in excess of offsetting the city's recovery.

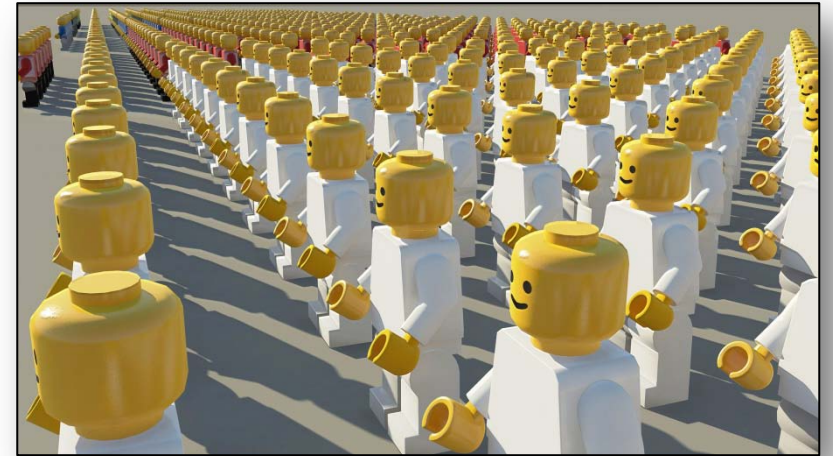
# Texas Tort Claims Act

- Applies to governmental units. §101.001(3)
- Governmental Units defined as:
  - Cities;
  - State and its agencies and political subdivisions;
  - Counties, hospital districts, school districts, junior college districts, water improvement districts, and water control districts;
  - Emergency service organizations.
- City owned hospitals, *City of Austin v. Davis*, 693 SW.2d 31 (Tex. App.-Austin, 1985).



# Texas Tort Claims Act- Employees

- TCA creates liability for governmental units for the acts of its employees.
- Employees defined as “*a person, including an officer or agent, who is in the paid service of a governmental unit ...* but does not include an independent contractor, an agent or employee of an independent contractor, or a person who performs tasks, the details of which the governmental unit does not have the right to control.” § 101.001(2)





# Scope of Employment

- For liability, torts of employee must have been committed within the scope of their employment.
  - A task lawfully assigned to an employee by competent authority.
- Detour from employment can exist no matter how short the time.
- Liability for “volunteers” needs to be assessed carefully.

# Motor Driven Vehicle or Equipment

Governmental unit is liable for property damages, personal injury and wrongful death resulting from negligent operation of a motor-driven vehicle or motor driven equipment. § 101.021(1)

- Employee must have been actively operating the vehicle at the time of the incident.
- Vehicle must have been used as a vehicle
- Must be a nexus between injury and operation or use of motor driven vehicle.



# Motor Driven Vehicle or Equipment

- Mere involvement of or proximity to a motor vehicle will not give rise to liability:
  - Plaintiff assaulted by passengers after exiting vehicle.
  - Plaintiff hit head exiting bus that was parked.
  - Plaintiff injured using a cigarette lighter in government vehicle.
  - Plaintiff stabbed while riding bus.
  - Plaintiff sexually assaulted while in government vehicle
  - Plaintiff injured after exiting government vehicle and falling in ditch.

# Motor Driven Vehicle or Equipment

- Examples of injuries arising out of negligent operation or use of motor vehicle:
  - Officer's vehicle spotlight caused truck to run into another vehicle.
  - Driver honked to signal it was safe to cross street.
  - Plaintiff struck by police car driven by on-duty officer.
  - Plaintiff entangled in rope attached to vehicle to move table.
  - Injuries resulted when driver hit breaks causing standing girl to fall.

# Personal Property

- Liability for personal injury and death caused by a condition or use of tangible personal property if a private person would be liable under Texas law. § 101.021(2)
- Tangible personal property is something that has a corporeal, concrete, and palpable existence.



- Governmental entity must use (or misuse) the property.

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# Personal Property

- Examples of personal property:
  - Tools
  - Football helmets
  - Bolt from tennis net post
  - Medical instruments
  - Hospital bed
  - Electrocardiogram

# Personal Property

- Examples that have been found to not constitute tangible property:
  - Information written on triage slip
  - Information in emergency room records
  - Permit authorizing use of highway to transport mobile home
  - Written policy
  - Information in instruction manuals

# Personal Property

- What does not constitute *use* of tangible property:
  - Leaving suicidal patient with walker and suspenders
  - Plastic bag that psychiatric patient used to commit suicide
  - Placing inmate in holding cell with phone that had a cord
  - White board hanging on wall fell on man
  - Where property is used to commit an intentional tort



# Real Property

- § 101.021 waives governmental immunity for certain premises defects.
- Standard of care generally imposed is that of a licensee, unless person pays for use of the premises (invitee).
  - Licensor owes duty to not injure by a willful or wanton act or through gross negligence.
  - Governmental unit owes invitee duty to maintain premises in reasonably safe condition, to inspect and discover a condition involving an unreasonable risk of harm, and duty to make safe or give adequate warning.
  - Only duty to a trespasser is to refrain from injuring him willfully, wantonly, or through gross negligence.

# Real Property

- Limitation on duty set out in § 101.022 does not apply to the duty to warn of special defects such as:
  - Excavations or obstructions on roads;
  - Duty to warn for absence, condition or malfunction of traffic control devices;
- Premise defect on toll highway, road or street required only duty owed to a licensee.
- § 101.022 does not create a new cause of action, but instead serves as a limitation upon general liability.
- When injury is caused by real property, liability is not determined by negligence of government employee, but upon the property itself being unsafe.

# Damages



Motor-driven vehicle or equipment:

1. Property damages;
2. Personal Injury;
3. Death.

Tangible personal property or real property:

1. Personal injury;
2. Death.

# Damages

- Damages for injuries suffered by living person may include:
  - Past and future medical expenses;
  - Past and future lost earnings;
  - Past and future physical pain and suffering and mental anguish;
  - Past property damages;
  - Pre-judgment and post-judgment interest; and
  - Court costs.

# Limits of Damages

	Per person	Single Occurrence for Bodily Injury or Death	Each Occurrence for Damages to Property
State Government	\$250,000	\$500,000	\$100,000
Local Government (not municipalities)	\$100,000	\$300,000	\$100,000
Municipalities	\$250,000	\$500,000	\$100,000

§ 101.024. *Exemplary Damages.*

TCA does not authorize exemplary damages.

# Joint Enterprise

A governmental entity that enters into a joint enterprise is liable for the torts of other members of the joint enterprise.

Elements of a Joint Enterprise:

1. Express or implied agreement among the members of the group;
2. A common purpose to be carried out by the group;
3. A community of pecuniary intent; and
4. An equal right to voice in the direction of the joint enterprise.

# Notice of Claim Requirements

## § 101.101. Notice.

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. Damage or injury claimed;
2. Time and place of incident;
3. The incident.

- Actual notice of damages or injury will suffice.
- Six month notice period is not waived because Person is a minor.
- Discovery rule does not apply to TCA claims.



# Practical Concerns

- If plaintiff does not plead a cause of action within the TCA or other lawful waiver of immunity, the court lacks subject matter jurisdiction.
  - File a plea to the jurisdiction to challenge subject matter jurisdiction.
  - Plaintiff must be given a chance to amend pleadings if such amendment could cure deficiency.
  - We always double or triple up and include special exceptions and affirmative defenses.
- Denial of plea to the jurisdiction is immediately appealable.



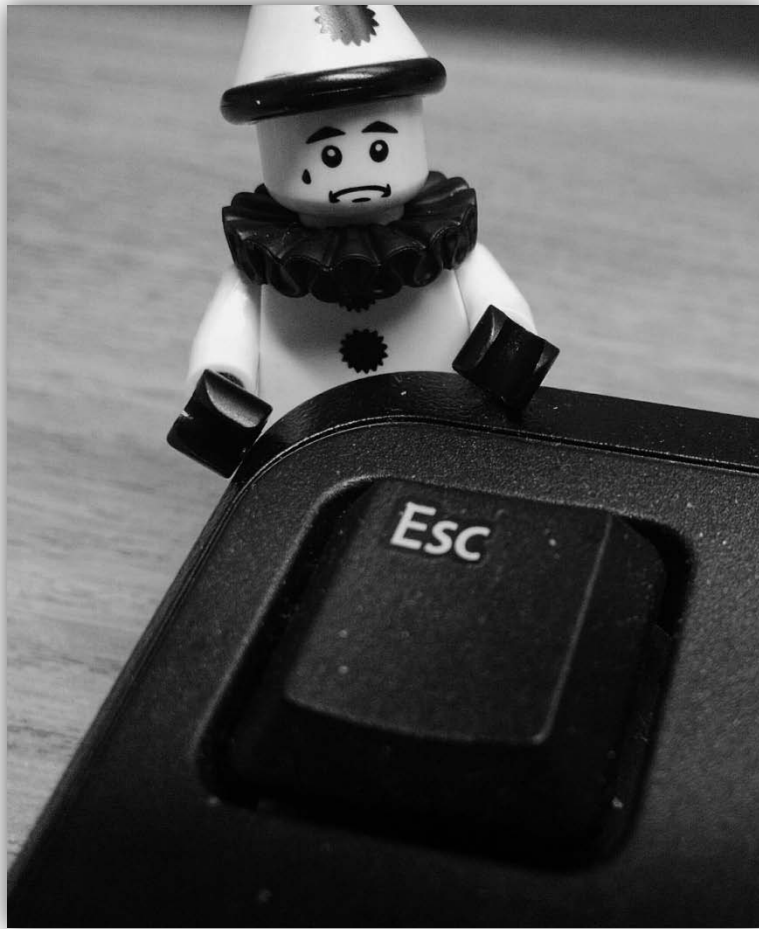
# Individual Immunity

- Defense of official or individual immunity is available to employees.
  - Nothing in TCA affects availability of immunity for individuals. § 101.026.
- Three part test on application of immunity:
  - 1. Governmental actor was performing a discretionary act;
  - 2. Act was performed in good faith; and
  - 3. It was within the scope of his official authority.

# Individual Immunity

- Immunity protects government employees from personal liability for good faith performance of discretionary duties within their scope of authority.
- Discretionary act is one that “involves personal deliberation, decision and judgment”.
  - Act is ministerial if it is so precisely defined by law that there is no element of judgment or discretion left to employee.
- The employee must act in “good faith”, such that a reasonable and prudent official could have believed conduct was justified.

# Election of Remedies



- Forces a Plaintiff to choose whether they want to sue the governmental entity or its employees in their individual capacities. § 101.106
- Suit against governmental unit forever bars suit or recovery against employee.
- Settlement with governmental unit forever bars suit or recovery against employee.
- When individuals are sued along with the government, employee shall be immediately dismissed.

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## An Introduction to the Texas Tort Claims Act and Immunities

Thank you!

**Slater C. Elza**

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