

LIABILITY

Understanding the Texas Tort Claims Act

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Riley Fletcher Basic Municipal Law Seminar

UNDERWOOD

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Good Resources



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- Political Subdivision Liability under Texas Tort Claims Act, 2012
- Sovereign Immunity, Texas Tort Claims Act, 2017
- Texas Tort Claims Act Basics, TCAA Website
- Understanding Sovereign Immunity and the Texas Tort Claims Act or “The Chamber of Secrets,” 2017

Texas Tort Claims Act (“TTCA”)



- Nothing to do with Federal claims.
- Enacted in 1969 and waived governmental entities sovereign immunity in certain circumstances.
- TTCA is a set of statutes that determine when a governmental entity may be liable for tortious conduct under state law.
- Governmental units could be liable for damages arising from proprietary functions.

Texas Tort Claims Act

- Granting governmental units sovereign immunity serves multiple purposes:
 - Protects governmental time and resources from private litigation and encourages forthright action by public officials.
 - Protects government from fraudulent or frivolous lawsuits that otherwise may arise because of the perceived “deep pockets” of government entities.



Texas Tort Claims Act

- Applies to governmental units.
§101.001(3)
- Governmental Units defined as:
 - Cities;
 - State and its agencies;
 - Counties, school districts, junior college districts, water improvement districts, and water control districts;
 - Emergency service organizations;
 - City owned hospitals.

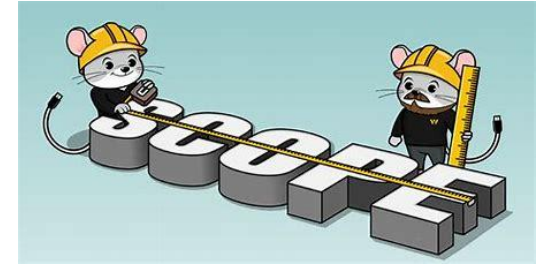


Texas Tort Claims Act- Employees

- TCA creates liability for governmental units for the acts of its employees.
- Employees defined:
 - Person in the paid service of a governmental unit.
 - Does not include independent contractor.
 - Does not include agent or employee of independent contractor.
- Possible for governmental unit to be held vicariously liable for the negligence of an unpaid volunteer.

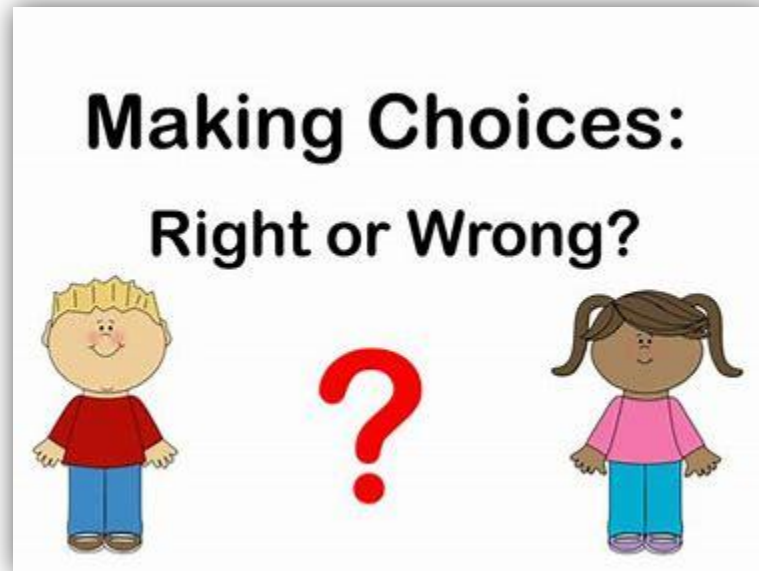


Scope of Employment



- For liability, torts of employee must have been committed within the scope of their employment.
- Detour from employment can exist no matter how short the time.
- Scope of employment can exist outside of normal working hours.

Election of Remedies



- Forces a Plaintiff to choose whether they want to sue the governmental entity or its employees in their individual capacities.
- Suit against governmental unit forever bars suit or recovery against employee.
- When individuals are sued along with the government, employee shall be immediately dismissed.
- Purpose is to preclude suits against the governmental employee where the claim is properly against the city.

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.
- Tortious act must relate to Defendant's operation of the vehicle.
- Must be a nexus between injury and operation or use of motor driven vehicle.



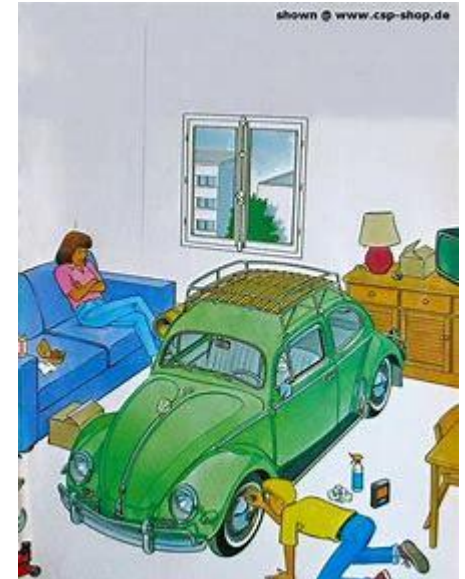
Operation of a Motor-Driven Vehicle



- Driver told student to take attendance and then slammed on the brakes.
- High beam spotlight caused oncoming traffic to run parked vehicles.
- Bus driver honking horn to signal it was safe to cross street.
- Attached rope to picnic table to move it.

Not Operation of a Motor-Driven Vehicle

- Students using parked bus as a place to meet and talk.
- Injured while sitting in a parked vehicle.
- Failure to supervise children at a bus stop.
- Police punching a person inside their vehicle.
- Striking head on door of bus not in use.
- Where the vehicle “is only the setting” for the wrongful conduct.



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.
- Whether the claim arises from the condition or use of property versus a premises defect is a question of law.
- Tangible personal property is something that has a corporeal, concrete, and palpable existence.



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

What is Tangible Property?

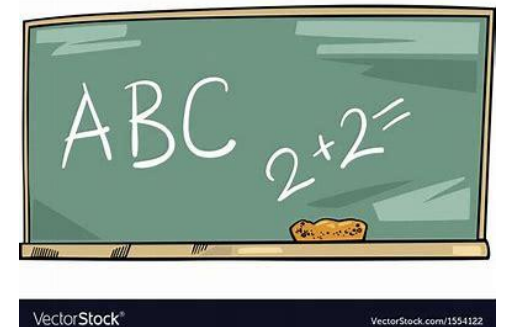


- Courts have struggled with applying the definition to records, documents and medical test results.
- Obviously personal property:
 - Medical instruments
 - Hospital beds
 - Tools and equipment
 - Football helmets
 - Props in plays



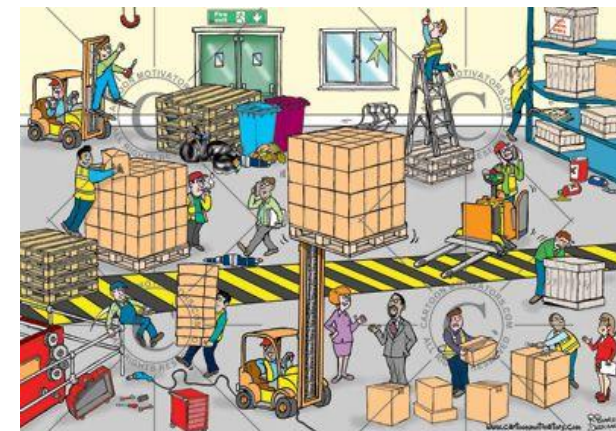
What is the “Use” of Personal Property?

- To put or bring something into action or service; to employ for or apply to a given purpose.
- Governmental unit does not “use” property when it merely allows someone else to use it.
- White board falling off of the wall is not “use.”
- Property “used” in commission of intentional tort does not count.



Premises Liability

- Suits involving premises or special defects must be tried in accordance with §101.022.
- Failure to get jury findings on ordinary defect means no waiver of sovereign immunity.
- Analyze whether Plaintiff was injured from negligence involving activities conducted on real property, or whether it's a result of defects in the real property.



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.



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.

This chapter does not authorize exemplary damages.



Governmental Functions

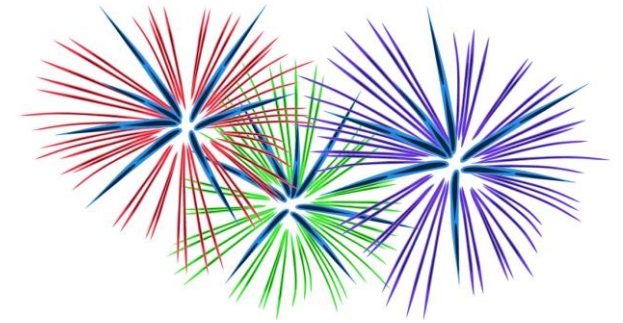


§ 101.0215. Liability of a Municipality

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 municipality in the interest of the general public, including but not limited to:

- Police and fire protection and control;
- Health and sanitation services;
- Street construction and design;
- Bridge construction/maintenance and street maintenance;
- Cemeteries and cemetery care;
- Garbage and solid waste removal, collection and disposal;
- Establishment/maintenance of jails;
- Sanitary and storm sewers;
- Hospitals;
- Airports;
- Waterworks;
- Repair garages;
- Libraries and library maintenance;
- Museums;
- Parks and zoos;
- Dams and reservoirs;

Governmental Functions



§ 101.0215. Liability of a Municipality

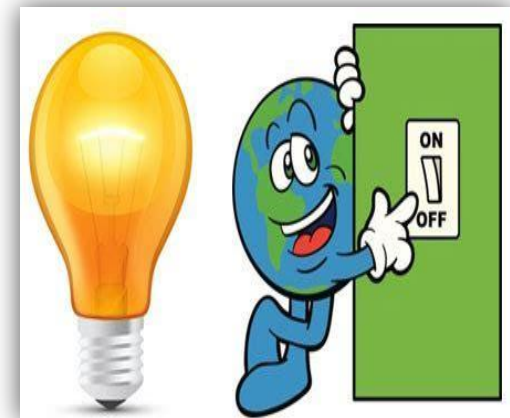
A municipality is liable under this chapter for damages arising from its governmental functions, which are those functions that are enjoined on a municipality by law and are given it by the state as part of the state's sovereignty, to be exercised by the municipality in the interest of the municipality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

- Civic, convention centers, or coliseums;
- Community, neighborhood, or senior citizen centers;
- Operation of emergency ambulance service;
- Recreational facilities (pools, beaches, marinas, etc.);
- Vehicle and motor driven equipment maintenance;
- Building codes and inspection;
- Zoning, planning, and plat approval;
- Maintenance of traffic signals, signs, and hazards
- Warning signals;
- Regulation of traffic;
- Transportation systems;
- Water and sewer service;
- Tax collection;
- Firework displays;
- Animal control;
- Parking facilities;

Government v. Proprietary

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. Operation and maintenance of a public utility;
 2. Amusements owned and operated by the municipality; and
 3. Any activity that is abnormally dangerous or ultra hazardous.
- No immunity from suit or liability.
 - No limitation on amount of recoverable damages.



Government v. Proprietary

- Courts look at nature of the activities and the persons benefits in making a determination.
- If activity is a mix of governmental and proprietary activities, a city will be found to have engaged in a proprietary function.



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Thank you!

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