

# LIABILITY UNDER THE TEXAS TORT CLAIMS ACT

By:

Richard Evans

Staff Attorney

Texas Municipal League  
Intergovernmental Risk Pool

The King Can Do No Wrong

# Sovereign Immunity

Under common law, state and political may not be sued or held liable for the actions of their agents or officers involved in a *governmental function*.

# 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.

# NO IMMUNITY

Breach of Contract

Texas Human Rights Act  
(age, race, sex)

Federal Claims

Annexation Proceedings

Injunctions

## **TORTS** **SOVEREIGN IMMUNITY**

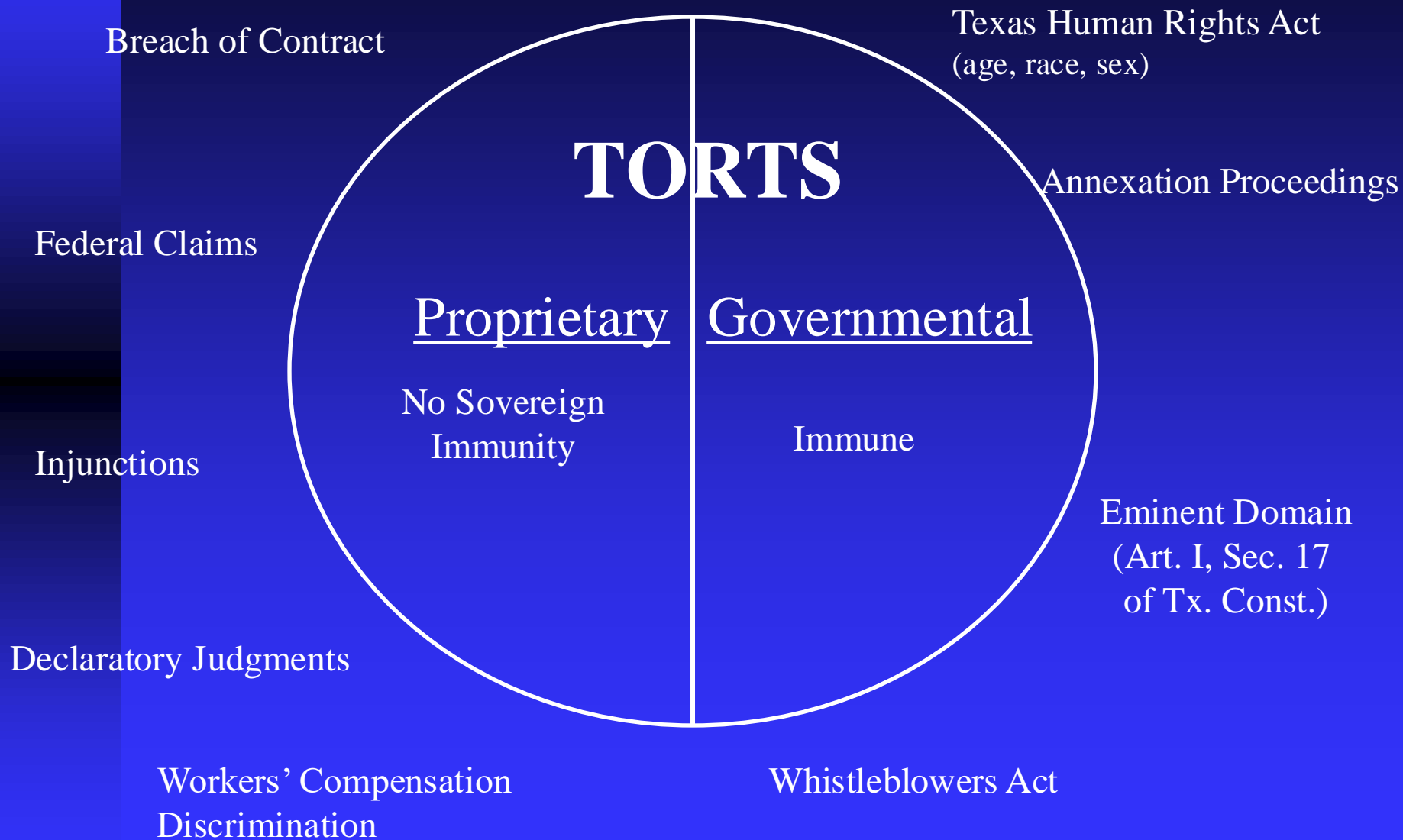
General Rule: The State and its  
agencies, departments and  
political subdivisions are not  
liable for the tortuous conduct of  
their employees.

Eminent Domain  
(Art. I, Sec. 17  
of Tx. Const.)

Declaratory Judgments

Workers' Compensation  
Discrimination

Whistleblowers Act



# 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.

# TORTS

Proprietary  
(City's Only)

No Immunity

\$

Tx. TORT  
Claims Act  
Sec. 101.021

\$

1. Motor driven equipment
2. Negligent use of tangible property
3. Condition of property  
(Premise defect; BI)

\$

Governmental

Immune



# GOVERNMENTAL FUNCTIONS

Cont'd

# THE LAUNDRY LIST

§ 101.0215. (a.)

See Paper – Pg. 3

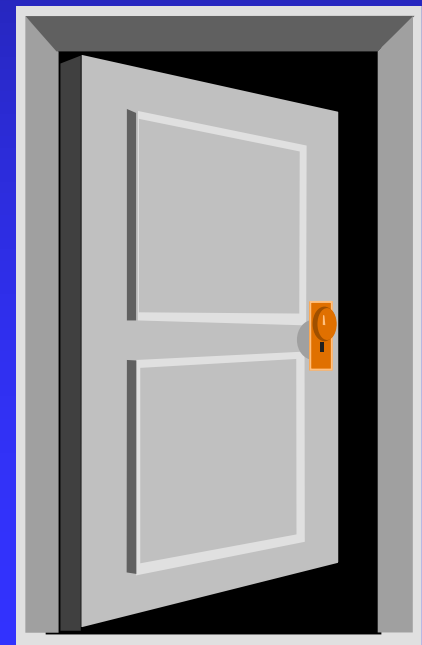
# PROPRIETARY FUNCTIONS

(City's Only)

§101.0215 (b)

- Gas Utility
- Electric Utility

# THE WAIVER OF IMMUNITY



## §101.021. Governmental Liability

A governmental unit in the state is liable for:

- 1) Property damage, personal injury, and death proximately caused by the wrongful act or omission or the negligence of an employee acting within his scope of employment if:

- A. the property damage, personal injury, or death arises from the operation or use of a motor-driven vehicle or motor-driven equipment; and
- B. The employee would be personally liable to the claimant according to Texas law; and

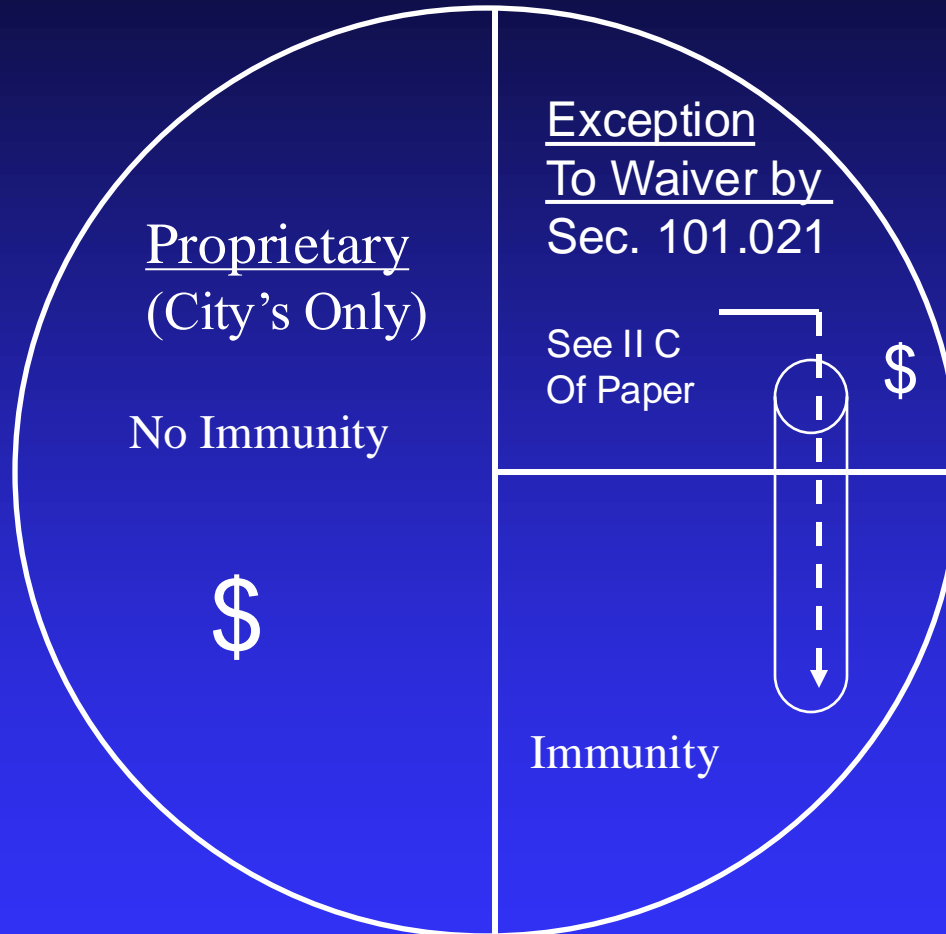
- 2) personal injury and death so caused by a condition or use of tangible personal or real property if the governmental unit would, were it a private person, be liable to the claimant according to Texas law.

# 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 WAIVER



Cont'd

§ 101.052. Legislative

§ 101.053. Judicial

§ 101.055. Tax Assessment

Failure to provide or the method of  
providing police or fire protection.

Cont'd

§ 101.056. Discretionary Powers

§ 101.057. Civil Disobedience and Certain  
Intentional Torts

§ 101.059. Attractive Nuisances

§ 101.060. Traffic and Road Control Devices

# **ALTERED STANDARDS AND OTHER LIMITATIONS**

Cont'd

## § 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.

Cont'd

## § 101.022. Duty Owed: Premise 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. §101.022 Duty Owed: Special Defects

- 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.

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.

## §101.055 (2)

This chapter does not apply to a claim arising:

- (2) 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 ordinances 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 for the safety of others;

# MUNICIPAL FUNDS



# 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 §101.02?
- 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